



# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

### PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, November 3, 2020 beginning at 5:30 P.M., P.S.T. utilizing GoToMeeting.com:

<https://global.gotomeeting.com/join/928163245>

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at <http://www.elkocitynv.gov/>, the State of Nevada's Public Notice Website at <https://notice.nv.gov>, and in the following locations:

ELKO CITY HALL— 1751 College Avenue, Elko, NV 89801

Date/Time Posted: October 27, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician  
Name Title

  
Signature

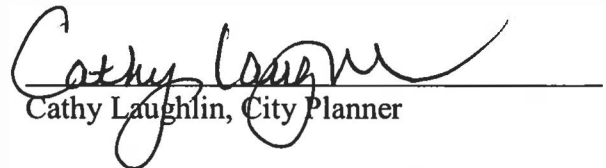
The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at [sarchuleta@elkocitynv.gov](mailto:sarchuleta@elkocitynv.gov) to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV, or on the City website at <http://www.elkocity.com>.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/928163245>. You can also dial in using your phone at +1 (408) 650-3123. The Access Code for this meeting is 928-163-245. Comments can also be emailed to [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov)

Dated this 27<sup>th</sup> day of October, 2020.

### NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

  
Cathy Laughlin, City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING AGENDA**  
**5:30 P.M., P.S.T., TUESDAY, NOVEMBER 3, 2020**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**  
**<https://global.gotomeeting.com/join/928163245>**

**CALL TO ORDER**

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

**APPROVAL OF MINUTES**

October 6, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

**I. NEW BUSINESS**

**A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

1. Review, consideration and possible approval of Final Map No. 8-20, filed by BDSA, LLC, for the development of a subdivision entitled Tower Hill Unit 4 involving the proposed division of approximately 8.601 acres of property into 5 lots for residential development and 1 remainder lot within the R1 (Single Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located northeast of Lamoille Highway and south of Stitzel Road. (APN 001-929-125)

2. Review, consideration, and possible recommendation to City Council for Vacation No. 4-20, filed by Grace Baptist Church, for the vacation of a 25' wide public utility easement bisecting APN 001-610-112, consisting of an area approximately 9,944 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The applicant is in the process of selling the parcel to a developer who would prefer to have the public easement run along the property line. The applicant will be granting a new public utility easement to the City of Elko in lieu of this easement.

3. Review, consideration, and possible action to initiate an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8 on: 1) six parcels of land located in the area of W. Cedar Street and D Street; 2) APN 001-01R-004 located on Front Street adjacent to the 5<sup>th</sup> Street Bridge; and 3) APN 110-620-058 located at the northeast corner of Ruby Vista Drive and College Parkway, and matters related thereto. **FOR POSSIBLE ACTION**

Recent development applications have revealed some inconsistencies between existing Zoning districts and Master Plan designations. The proposed amendment cleans up these inconsistencies.

4. Review, consideration, and possible action to set regular meeting dates as well as special meeting dates for 2021, and matters related thereto. **FOR POSSIBLE ACTION**

## **II. REPORTS**

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
  1. Zoning Bulletin
- D. Miscellaneous Elko County
- E. Training

## **COMMENTS BY THE GENERAL PUBLIC**

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

**NOTE:** The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

## **ADJOURNMENT**

Respectfully submitted,

A handwritten signature in black ink, reading "Cathy Laughlin". The signature is fluid and cursive, with the first name "Cathy" and last name "Laughlin" clearly distinguishable.

Cathy Laughlin  
City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING MINUTES**  
**5:30 P.M., P.D.S.T., TUESDAY, OCTOBER 6, 2020**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**  
**<https://global.gotomeeting.com/join/223862189>**

**CALL TO ORDER**

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

**ROLL CALL**

**Present:**       Jeff Dalling  
                  Tera Hooiman  
                  Stefan Beck  
                  Gratton Miller  
                  Giovanni Puccinelli

**Absent:**       John Anderson  
                  Vacancy

**City Staff Present:**   Scott Wilkinson, Assistant City Manager  
                          Cathy Laughlin, City Planner  
                          Michele Rambo, Development Manager  
                          Bob Thibault, Civil Engineer  
                          Matthew Griego, Fire Chief  
                          Kelly Wooldridge, City Clerk

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

*There were no public comments made at this time.*

**APPROVAL OF MINUTES**

September 1, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion: Approve the Minutes dated September 1, 2020.**

**Moved by Gratton Miller, seconded by Tera Hooiman.**

*\*Motion passed unanimously. (5-0)*

**I. NEW BUSINESS**

## **A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

1. Review, consideration, and possible recommendation to City Council for Parcel Map 8-20, filed by Gallagher Family Trust. The parcel map creates one parcel from two existing parcels and contains an offer of dedication for right-of-way for a portion of Norco Lane. Due to the dedication, it is referred to the Planning Commission with recommendation to the City Council, and matters related thereto. **FOR POSSIBLE ACTION**

The parcel map creates one parcel from two parcels owned by the applicant, Gallagher Family Trust. The map will be dedicating a portion of Norco Lane to the City of Elko.

Casey Gallagher, Gallagher Ford, explained that they were looking to combine the two parcels at the dealership and dedicate a portion of Norco Lane back to the City.

Cathy Laughlin, City Planner, went through the City of Elko Staff Report dated September 22, 2020. Staff recommended conditional approval with the findings and conditions listed in the staff report.

Bob Thibault, Civil Engineer, stated that the Engineering Department had no additional comments and recommended conditional approval.

Michele Rambo, Development Manager, had no comments or concerns.

Matt Griego, Fire Chief, had no additional comments and recommended conditional approval.

Scott Wilkinson, Assistant City Manager, recommended approval as presented by staff.

**\*\*\*Motion: Forward a recommendation to City Council to conditionally approve Parcel Map No. 8-20 with the conditions listed in the City of Elko Staff Report dated September 22, 2020, listed as follows:**

1. **Prior to map recordation, a note shall be added to the map requiring the completion of sidewalk improvements along 30<sup>th</sup> Street with any future development or site improvement.**
2. **The Parcel Map shall be recorded by Elko County within two (2) years of this approval.**
3. **Revise the Parcel Map to show original property lines prior to City sign-off.**

**Commissioner Puccinelli's findings to support the motion were the parcel map conforms with the City of Elko Master Plan Transportation and Land Use Components, the City of Elko Wellhead Protection Plan, and City of Elko Code Sections 2-13-3, 3-2-4, 3-2-10(B), 3-8, and 3-3-24, and 3-3-28.**

Moved by Giovanni Puccinelli, seconded by Gratton Miller

*\*Motion passed unanimously. (5-0)*

## II. REPORTS

### A. Summary of City Council Actions.

*Ms. Laughlin reported that on September 8<sup>th</sup> the City Council accepted the resignation of Commissioner Evi Buell. The two letters of interest for the open position will be reviewed with City Council on October 13<sup>th</sup>. On the September 22<sup>nd</sup> meeting the Council approved a parcel map to create a 2,800 sq. ft. parcel that is along the river, which is to be sold to Safelink for their fiber infrastructure. They also approved Rezone 1-20 for the Fire Station on South 9<sup>th</sup> Street and also rezone 5-20 for Legion Construction and Development for the 18 townhomes up North 5<sup>th</sup> Street. After a very long public hearing the City Council upheld the Planning Commission's decision to deny CUP 3-20 for Ruby Mountain Acton Academy.*

### B. Summary of Redevelopment Agency Actions.

### C. Professional articles, publications, etc.

#### 1. Zoning Bulletin

### D. Miscellaneous Elko County

### E. Training

*Ms. Laughlin reported that the appeal basis for CUP 3-20 was on some of the errors that were made in that Planning Commission Meeting. Ms. Laughlin pointed out that she included some training in the agenda packet on findings. She wanted everyone to review that. It was one of the errors in the meeting. Ms. Buell made the motion to deny, but didn't include any findings to back up the denial.*

## COMMENTS BY THE GENERAL PUBLIC

*There were no public comments made at this time.*

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## ADJOURNMENT

There being no further business, the meeting was adjourned.

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Jeff Dalling, Chairman

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Tera Hooiman, Secretary

DRAFT



**Elko City Planning Commission  
Agenda Action Sheet**

- 1. Review, consideration and possible approval of Final Map No. 8-20, filed by BDSA, LLC, for the development of a subdivision entitled Tower Hill Unit 4 involving the proposed division of approximately 8.601 acres of property into 5 lots for residential development and 1 remainder lot within the R1 (Single Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
- 2. Meeting Date: November 3, 2020**
- 3. Agenda Category: *NEW BUSINESS***
- 4. Time Required: 15 Minutes**
- 5. Background Information: Subject property is located northeast of Lamoille Highway and south of Stitzel Road. (APN 001-929-125)**
- 6. Business Impact Statement: Not Required**
- 7. Supplemental Agenda Information: Application and Staff Report**
- 8. Recommended Motion: Recommend that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance with the approved construction plans that satisfies the requirements of Title 2 Chapter 3, and conditionally approve Final Map 8-20 with findings and conditions listed in the Staff Report dated October 20, 2020.**
- 9. Findings: See Staff Report dated October 20, 2020**
- 10. Prepared By: Michele Rambo, AICP, Development Manager**
  - 1. Agenda Distribution: BDSA, LLC**

**Attn: Scott Macritchie**  
**312 Four Mile Trail**  
**Elko, NV 89801**

**High Desert Engineering**  
**Attn: Tom Ballew**  
**640 Idaho Street**  
**Elko, NV 89801**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 11/3**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Final Map No. 8-20 Tower Hill-Unit 4

Applicant(s): BDSA, LLC

Site Location: SW side of Deerfield Way, Elkhorn Cir. -APN 001-929-125

Current Zoning: R1 Date Received: 9/4/20 Date Public Notice: N/A

COMMENT: This is for the division of approximately 8.6 acres into 5 lots for residential development + 1 remainder parcel within an R1 zoning district.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 10/23/2020  
Recommend approval

SAW

Initial

City Manager: Date: 10/23/2020  
No comments/concerns.

W

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

**REPORT DATE:** October 20, 2020  
**PLANNING COMMISSION DATE:** November 3, 2020  
**AGENDA ITEM NUMBER:** I.A.1.  
**APPLICATION NUMBER:** Final Map 8-20  
**APPLICANT:** BDSA, LLC  
**PROJECT DESCRIPTION:** Tower Hill Phase 4

**A Final Map for the division of approximately 8.601 acres into 5 lots for residential development and 1 remainder lot within an R1 (Single Family Residential) zoning district.**



### **STAFF RECOMMENDATION:**

**RECOMMEND CONDITIONAL APPROVAL**, subject to findings of fact, and conditions as stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-929-125

**PARCEL SIZE:** 8.601 Acres

**EXISTING ZONING:** (R1) Single-Family Residential.

**MASTER PLAN DESIGNATION:** (RES-MD) Residential Medium Density

**EXISTING LAND USE:** Vacant

### **BACKGROUND:**

1. The Final Map for Tower Hill Phase 4 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Planning Commission reviewed and recommended a conditional approval to the City Council on the Tower Hill Phase 4 Tentative Map.
3. The City Council conditionally approved the Tower Hill Phase 4 Tentative Map on August 25, 2020.
4. The subdivision is located on APN 001-929-125.
5. The proposed subdivision consists of 5 residential lots and a remainder lot.
6. The total subdivided area is approximately 8.601 acres.
7. The proposed density is 1.72 units per acre.
8. Approximately 0.233 acres are offered for dedication for street development.
9. Drainage and utility easements are provided along all lot lines.
10. The property is located northeast of Lamoille Highway and south of Stitzel Road.

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

- ) North: Single-Family and Multiple-Family Residential (R) / Developed
- ) South: General Agriculture / Vacant
- ) East: Elko County / Scattered Single-Family Residences
- ) West: General Commercial (C) / Vacant
- ) Planned Commercial (PC) / Vacant

### **PROPERTY CHARACTERISTICS:**

- ) The property is an undeveloped residential parcel.
- ) The site abuts previous residential development to the north and northwest, vacant agriculture property to the south, vacant commercial property to the west, and partially developed residential property to the east outside City limits.
- ) The parcel slopes down to Lamoille Highway. The slope has been incorporated into the tentative map design.
- ) The property will be accessed by Deerfield Way, to be developed as part of Tower Hill Unit 3 (public improvements being installed at this time).

**APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:**

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Redevelopment Plan
- ) City of Elko Wellhead Protection Plan
- ) City of Elko Zoning – Section 3-3-7 Final Map State (Stage III)
- ) City of Elko Zoning – Section 3-3-8 Content and Format of Final Map Submittal
- ) City of Elko Zoning – Section 3-3-9 to 3-3-16 (Inclusive) Subdivision Design Standards
- ) City of Elko Zoning – Section 3-3-17 to 3-3-22 (Inclusive) Public Improvements/  
Guarantees
- ) City of Elko Zoning – Section 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 Zoning Code  
Standards
- ) City of Elko Zoning – Section 3-8 Flood Plain Management

**MASTER PLAN - Land use:**

Conformance with the Land Use component of the Master Plan was evaluated with review and approval of the Tentative Map. The Final Map is in conformance with the Tentative Map.

Therefore, the proposed subdivision is in conformance with the Land Use Component of the Master Plan.

**MASTER PLAN - Transportation:**

Conformance with the Transportation component of the Master Plan was evaluated with review and approval of the Tentative Map. The Final Map is in conformance with the Tentative Map.

Therefore, the proposed subdivision is in conformance with the Transportation Component of the Master Plan.

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the redevelopment area.

**ELKO WELLHEAD PROTECTION PLAN:**

The property is located outside of any capture zone for City of Elko wells. Development of the site is required to be connected to a programmed sewer system and all street drainage will be directed to a storm sewer system.

As the project is designed, it does not present a hazard to City wells.

**SECTION 3-3-7 FINAL MAP STAGE (STAGE III):**

**Pre-submission Requirements (C)(1)** – The Final Map is in conformance with the zone requirements.

**Pre-submission Requirements (C)(2)** – The proposed Final Map conforms to the Tentative Map.

**SECTION 3-3-8 CONTENT AND FORMAT OF FINAL MAP SUBMITTAL:**

- A. Form and Content – The Final Map conforms to the required size specifications and provides the appropriate affidavits and certifications.
- B. Identification Data
  - 1. The Final Map identifies the subdivision and provides its location by section, township, range, and county.
  - 2. The Final Map was prepared by a properly licensed surveyor.
  - 3. The Final Map provides a scale, north arrow, and date of preparation.
- C. Survey Data
  - 1. The boundaries of the subdivision are fully balanced and closed.
  - 2. Any exceptions are noted on the Final Map.
  - 3. The Final Map is tied to a section corner.
  - 4. The location and description of any physical encroachments upon the boundary of the subdivision are noted on the Final Map.
- D. Descriptive Data
  - 1. The name, right-of-way lines, courses, lengths, and widths of all streets and easements are noted on the Final Map.
  - 2. All drainage ways are noted on the Final Map.
  - 3. All utility and public service easements are noted on the Final Map.
  - 4. The location and dimensions of all lots, parcels, and exceptions are shown on the Final Map.
  - 5. All residential lots are numbered consecutively on the Final Map.
  - 6. There are no sites dedicated to the public shown on the Final Map.
  - 7. The locations of adjoining subdivisions are noted on the Final Map with required information.
  - 8. There are no deed restrictions proposed.
- E. Dedication and Acknowledgment
  - 1. The owner's certificate has the required dedication information for all easements and right-of-ways.
  - 2. The execution of dedication is acknowledged with space to be certified by a notary public.
- F. Additional Information
  - 1. All centerline monuments for streets are noted as being set on the Final Map.
  - 2. The centerline and width of each right-of-way is noted on the Final Map.
  - 3. The Final Map indicates the location of monuments that will be set to determine the boundaries of the subdivision.
  - 4. The length and bearing of each lot line is identified on the Final Map.
  - 5. The Final Map is located adjacent to a city boundary, which is shown on the Final Map.
  - 6. The Final Map identifies the location of the section lines nearest the property.
- G. City to Check
  - 1. Closure calculations have been provided. Civil improvement plans have been approved. Drainage plans have been approved. An engineer's estimate has been provided.

2. The lot closures are within the required tolerances.

#### H. Required Certifications

1. The Owner's Certificate is shown on the Final Map.
2. The Owner's Certificate offers for dedication all right-of-ways shown on the Final Map.
3. A Clerk Certificate is shown on the Final Map, certifying the signature of the City Council.
4. The Owner's Certificate offers for dedication all easements shown on the Final Map.
5. A Surveyor's Certificate is shown on the Final Map and provides the required language.
6. The City Engineer's Certificate is shown on the Final Map.
7. A certificate from the Nevada Division of Environmental Protection is provided with the required language.
8. The engineer of record has submitted the Tentative Map and construction plans to the state, but no written approval has been received.
9. A certificate from the Division of Water Resources is provided on the Final Map with the required language.
10. The construction plans identify the required water meters for the subdivision.

#### **SECTION 3-3-9 THROUGH 3-3-16 (INCLUSIVE)**

The proposed subdivision was evaluated for conformance to the referenced sections of code during the Tentative Map process.

The proposed development conforms with these sections of City code.

#### **SECTION 3-3-17 RESPONSIBILITY FOR PUBLIC IMPROVEMENTS**

The subdivider shall be responsible for all required improvements in conformance with this section of City code.

#### **SECTION 3-3-18 CONSTRUCTION PLANS**

The subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with this section of City code. The plans have been approved by City staff.

#### **SECTION 3-3-19 CONSTRUCTION AND INSPECTION**

The subdivider has submitted plans to the city and state agencies for review to receive all permits in accordance with this section of City code.

### **SECTION 3-3-20 REQUIRED IMPROVEMENTS**

The subdivider has submitted civil improvement plans which are in conformance with this section of City code.

Civil improvements include curb, gutter, and sidewalk as well as lighting, USPS gang boxes, paving, and utilities within the Elkhorn Circle right-of-way.

### **SECTION 3-3-21 AGREEMENT TO INSTALL IMPROVEMENTS**

The subdivider will be required to enter into a Performance Agreement to conform to this section of City code.

### **SECTION 3-3-22 PERFORMANCE AND MAINTENANCE GUARANTEES**

The subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with this section of City code.

### **SECTIONS 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), AND 3-2-17**

The proposed subdivision was evaluated for conformance to the referenced sections of code during the Tentative Map process.

The proposed development conforms with these sections of City code.

### **SECTION 3-8 FLOODPLAIN MANAGEMENT:**

This parcel is not designated in a Special Flood Hazard Area (SFHA).

### **FINDINGS**

1. The Final Map for Tower Hill Phase 4 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Final Map is in conformance with the Tentative Map.
3. The proposed subdivision is in conformance with the Land Use and Transportation Components of the Master Plan.
4. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive).
5. The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City code.
6. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City code.



7. The Subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City code.
8. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City code, have been approved by City staff.
9. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City code.
10. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City code.
11. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), 3-2-17, and 3-8 of City code.

**STAFF RECOMMENDATION/CONDITIONS OF APPROVAL:**

Staff recommends this item be **conditionally approved** with the following conditions:

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.
4. The Final Map for Tower Hill Phase 4 is approved for 5 residential lots and 1 remainder lot.
5. The Utility Department will issue a Will Serve Letter for the subdivision upon approval of the Final Map by the City Council.
6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Site disturbance, including clearing and grubbing, shall not commence prior to the issuance of a grading permit by the City of Elko.
8. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
9. Conformance with the conditions of approval of the Tentative Map is required.

10. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. The Engineer of Record is to certify that the project was completed in conformance with the approved plans and specifications.



# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

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October 26, 2020

BDSA, LLC  
Attn: Scott MacRitchie  
312 Four Mile Trail  
Elko, NV 89801  
Via Email: [scott@macritchie.com](mailto:scott@macritchie.com)

Re: Final Map No. 8-20

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: <https://global.gotomeeting.com/join/928163245>. You can also dial in using your phone at **+1 (408) 650-3123**. The **Access Code** for this meeting is **928-163-245**.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

  
Shelby Archuleta  
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Tom Ballew, 640 Idaho Street, Elko, NV 89801  
Via Email: [tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)



**City of Elko – Development Department**  
**1755 College Avenue**  
**Elko, NV 89801**  
**Telephone: 775.777.7210**  
**Facsimile: 775.777.7219**

September 9, 2020

High Desert Engineering, LLC  
Attn: Tom Ballew  
640 Idaho Street  
Elko, NV 89801

Re: Tower Hill Phase 4 Final Map – Complete Submittal

Dear Mr. Ballew:

The City of Elko has reviewed your Final Map application materials for Tower Hill Phase 4 (submitted September 4, 2020) and has found them to be complete. We will now begin processing your application by transmitting the materials to other City departments for their review. You may receive further comments or corrections as these reviews progress. Barring any complications, this Final Map will be scheduled for Planning Commission on November 3, 2020 and City Council on November 24, 2020.

I will keep you updated on the status of your application, but please feel free to contact me at (775) 777-7217 if you have any questions.

Sincerely,

Michele Rambo, AICP  
Development Manager  
mrambo@elkocitynv.gov

CC: BDSA, LLC  
Attn: Scott MacRitchie  
312 Four Mile Trail  
Elko, NV 89801

City of Elko – File

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*Thomas C. Ballew, P.E., P.L.S.*  
*Robert E. Morley, P.L.S.*  
*Duane V. Merrill, P.L.S.*

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*Consulting Civil Engineering*  
*Land Surveying*  
*Water Rights*

---

September 4, 2020

Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, NV 89801

Re: Tower Hill Subdivision, Unit Number 4  
Final Plat

Dear Cathy,

Enclosed please find the following items regarding the above referenced project:

- Application for Final Plat Approval.
- Two (2) 24"x36" copies (consisting of 2 sheets each) of the proposed Final Plat.
- One (1) 8-1/2"x11" copy of the proposed Final Plat.
- Two (2) 24"x36" copies of the proposed construction drawings.
- One (1) copy of the subdivision lot calculations.
- One (1) copy of the public improvement estimate.
- Check in the amount of \$ 900.00 for the Final Plat review fee.

Pdf copies of the documents listed above will be transmitted to you.

Please be advised that I have also forwarded a request to the City of Elko Fire Department for a letter outlining the fire flow requirements for this project.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,  
HIGH DESERT Engineering, LLC

Thomas C. Ballew, P.E., P.L.S.

enclosures

cc Scott MacRitchie - BDSA,LLC

RECEIVED

SEP 04 2020

## Shelby Archuleta

---

**From:** Michele L. Rambo  
**Sent:** Friday, September 4, 2020 1:59 PM  
**To:** Thomas C Ballew; Cathy Laughlin  
**Cc:** 'Scott MacRitchie'; 'Steve Dorsa'; Shelby Archuleta  
**Subject:** RE: Tower Hill Unit 4 - Final Plat Submittal

Perfect!

And I found the reports.

I'll review the rest of the submittal on Tuesday and let you know if there is anything else we need.

Michele Rambo, AICP  
Development Manager  
City of Elko  
1751 College Avenue  
Elko, NV 89801  
775-777-7217  
mrambo@elkocitynv.gov

**From:** Thomas C Ballew <tcballew@frontiernet.net>  
**Sent:** Friday, September 4, 2020 1:55 PM  
**To:** Michele L. Rambo <mrambo@elkocitynv.gov>; Cathy Laughlin <claughlin@elkocitynv.gov>  
**Cc:** 'Scott MacRitchie' <scott@macritchie.com>; 'Steve Dorsa' <sdorsa@frontiernet.net>; Shelby Archuleta <sarchuleta@elkocitynv.gov>  
**Subject:** RE: Tower Hill Unit 4 - Final Plat Submittal

Michele,

Attached please find the NDEP Tentative Approval letter for Tower Hill Unit 4.

Tom



640 Idaho Street  
Elko, Nevada 89801

**Thomas C. Ballew**  
**PE, PLS**

(775) 738-4053 Work  
(775) 753-7693 Fax  
(775) 934-6201 Cell

tcballew@frontiernet.net  
tdeng@frontiernet.net

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**From:** Michele L. Rambo [<mailto:mrambo@elkocitynv.gov>]  
**Sent:** Friday, September 04, 2020 1:17 PM

**To:** Thomas C Ballew <[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)>; Cathy Laughlin <[claughlin@elkocitynv.gov](mailto:claughlin@elkocitynv.gov)>  
**Cc:** 'Scott MacRitchie' <[scott@macritchie.com](mailto:scott@macritchie.com)>; 'Steve Dorsa' <[sdorsa@frontiernet.net](mailto:sdorsa@frontiernet.net)>; Shelby Archuleta <[sarchuleta@elkocitynv.gov](mailto:sarchuleta@elkocitynv.gov)>  
**Subject:** RE: Tower Hill Unit 4 - Final Plat Submittal

I'll look around for the reports. They must have gotten buried somewhere...

Michele Rambo, AICP  
Development Manager  
City of Elko  
1751 College Avenue  
Elko, NV 89801  
775-777-7217  
[mrambo@elkocitynv.gov](mailto:mrambo@elkocitynv.gov)

**From:** Thomas C Ballew <[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)>  
**Sent:** Friday, September 4, 2020 1:07 PM  
**To:** Michele L. Rambo <[mrambo@elkocitynv.gov](mailto:mrambo@elkocitynv.gov)>; Cathy Laughlin <[claughlin@elkocitynv.gov](mailto:claughlin@elkocitynv.gov)>  
**Cc:** 'Scott MacRitchie' <[scott@macritchie.com](mailto:scott@macritchie.com)>; 'Steve Dorsa' <[sdorsa@frontiernet.net](mailto:sdorsa@frontiernet.net)>; Shelby Archuleta <[sarchuleta@elkocitynv.gov](mailto:sarchuleta@elkocitynv.gov)>  
**Subject:** RE: Tower Hill Unit 4 - Final Plat Submittal

Michele,

1. I have a call into NDEP to find out the status of the Tentative submittal. I will let you know what that status is as soon as they get around to calling me back. As you know, they have been less than responsive in the past few months.
2. I personally delivered copies of the geotechnical report and the hydrology report to you 4 weeks ago.

Tom



**Thomas C. Ballew**  
**PE, PLS**

(775) 738-4053 Work  
(775) 753-7693 Fax  
(775) 934-6201 Cell

[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)  
[hdeng@frontiernet.net](mailto:hdeng@frontiernet.net)

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**From:** Michele L. Rambo [<mailto:mrambo@elkocitynv.gov>]  
**Sent:** Friday, September 04, 2020 11:17 AM  
**To:** Thomas C Ballew <[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)>; Cathy Laughlin <[claughlin@elkocitynv.gov](mailto:claughlin@elkocitynv.gov)>  
**Cc:** Scott MacRitchie <[scott@macritchie.com](mailto:scott@macritchie.com)>; Steve Dorsa <[sdorsa@frontiernet.net](mailto:sdorsa@frontiernet.net)>; Shelby Archuleta <[sarchuleta@elkocitynv.gov](mailto:sarchuleta@elkocitynv.gov)>  
**Subject:** RE: Tower Hill Unit 4 - Final Plat Submittal

Hi Tom. Condition #3 of the Tentative Map states that NDEP approval of the Tentative Map must happen before submitting the Final Map to us (this is a code requirement). Also, #7 and #8 require a soils and hydrology report be submitted (you can just put the current date on the ones you did for Phases 1-3 if this portion of the project was included in those). Until we get these approvals/items, this Final Map application will be considered incomplete and not processed.

I'll do the initial review to make sure we have everything else and get a formal letter to you early next week.

**STAFF RECOMMENDATION:**

**Staff recommends this item be conditionally approved with the following conditions:**

**Development Department:**

1. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
2. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
3. The Tentative Map must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.
4. Construction plans must be approved by the Nevada Department of Environmental Protection prior to issuance of a grading permit.
5. Tentative Map approval does not constitute authorization to proceed with site improvements.
6. The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS360(1)(a). Approval of the Tentative Map will automatically lapse at that time.
7. A soils report is required with Final Map submittal.
8. A hydrology report is required with Final Map submittal.
9. Final Map construction plans are to comply with Chapter 3-3 of City code.
10. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
11. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.
12. A modification from standards be approved by City Council for Lot 402, 403, 404, and 405 to allow for shorter-than-required front lots widths.
13. Construction plans shall include the portion of shared-use path along Lamoille Highway that the developer will install.



City of Elko  
1751 College Avenue  
Elko, NV 89801  
775-777-7217  
[mrambo@elkocitynv.gov](mailto:mrambo@elkocitynv.gov)

**From:** Thomas C Ballew <[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)>  
**Sent:** Friday, September 4, 2020 10:50 AM  
**To:** Cathy Laughlin <[claughlin@elkocitynv.gov](mailto:claughlin@elkocitynv.gov)>  
**Cc:** Scott MacRitchie <[scott@macritchie.com](mailto:scott@macritchie.com)>; Steve Dorsa <[sdorsa@frontiernet.net](mailto:sdorsa@frontiernet.net)>; Michele L. Rambo <[mrambo@elkocitynv.gov](mailto:mrambo@elkocitynv.gov)>  
**Subject:** Tower Hill Unit 4 - Final Plat Submittal

Cathy,

Attached please find a pdf copy of the Tower Hill Subdivision, Unit 4, Final Plat application package.

Tom



640 Idaho Street  
Elko, Nevada 89801

**Thomas C. Ballew  
PE, PLS**

(775) 738-4083 Work  
(775) 753-7693 Fax  
(775) 934-6201 Cell

[tcballew@frontiernet.net](mailto:tcballew@frontiernet.net)  
[hdeng@frontiernet.net](mailto:hdeng@frontiernet.net)

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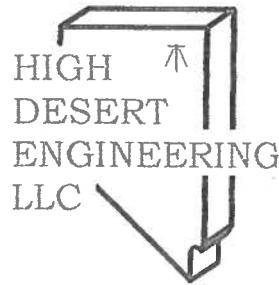


Virus-free. [www.avg.com](http://www.avg.com)

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Thomas C. Ballew, P.E., P.L.S.  
Robert E. Morley, P.L.S.  
Duane V. Merrill, P.L.S.

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Consulting Civil Engineering  
Land Surveying  
Water Rights

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September 9, 2020

Nevada Division of Environmental Protection  
Bureau of Water Pollution Control  
901 S. Stewart Street, Suite 4001  
Carson City, NV 89701-5249

Re: Tower Hill Subdivision, Unit 4 - Elko, Nevada

Ladies and gentlemen:

Enclosed for your review please find the following:

- Three (3) copies of the proposed improvement plans and the proposed final plat for the above referenced subdivision.
- Two (2) copies of the Application for Approval of a Water Project.
- Two (2) copies of the Intent to Serve letter from the City of Elko.
- Two (2) copies of a letter from the Elko Fire Department outlining fire flow requirements.
- Checks for the Bureau of Water Pollution Control review fees as follows:

Final Map:	\$ 400.00 plus 6 lots @ \$ 3.00	\$ 418.00
Improvement Plans:	\$ 250.00 plus 6 lots @ \$ 3.00	\$ 268.00

Hydraulic modeling for this subdivision will be provided to you by the City of Elko.

Please let me know if you need any additional information. Thank you for your assistance on this project.

Sincerely,  
HIGH DESERT Engineering, LLC



Thomas C. Ballew, P.E., P.L.S.

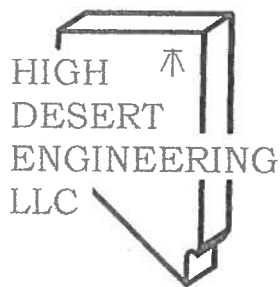
enclosures

cc Scott MacRitchie, BDSA (letter only – via email)  
Michele Rambo, City of Elko (letter only – via email)  
Bob Thibault, City of Elko (letter only – via email)  
Dale Johnson, City of Elko (letter only – via email)  
Shelby Archuleta, City of Elko (letter only - via email)

---

*Thomas C. Ballew, P.E., P.L.S.*  
*Robert E. Morley, P.L.S.*  
*Duane V. Merrill, P.L.S.*

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*Consulting Civil Engineering*  
*Land Surveying*  
*Water Rights*

---

September 9, 2020

Division of Water Resources  
901 South Stewart Street, Suite 2002  
Carson City, NV 89701

Re: Tower Hill Subdivision – Unit 4 - Elko, Nevada

Ladies and gentlemen:

Enclosed please find the following items regarding the above referenced subdivision:

- One (1) copy of the Final Plat
- Check in the amount of \$120.00 for the Final Plat Review Fee

A copy of the "Intent to Serve" letter for this subdivision is attached. The final "Will Serve" letter for this subdivision will be issued by the City of Elko, Nevada, upon completion of their review.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,  
HIGH DESERT Engineering, LLC



Thomas C. Ballew, P.E., P.L.S.

Enclosures:

cc: Scott MacRitchie, BDSA, LLC  
Michele Rambo, City of Elko (letter only – via email)  
Shelby Archuleta, City of Elko (letter only – via email)



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 \* (775) 777-7119 fax

### APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s): BDSA, LLC  
MAILING ADDRESS: 312 Four Mile Trail, Elko, NV 89801  
PHONE NO (Home) \_\_\_\_\_ (Business) (775) 340-6005  
NAME OF PROPERTY OWNER (If different): same  
(Property owner consent in writing must be provided)  
MAILING ADDRESS: same  
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):  
ASSESSOR'S PARCEL NO.: 001-929-125 Address Not Addressed  
Lot(s), Block(s), & Subdivision \_\_\_\_\_  
Or Parcel(s) & File No. Parcel B. File 741117  
PROJECT DESCRIPTION OR PURPOSE: Single Family Residential Lots  
APPLICANT'S REPRESENTATIVE OR ENGINEER: High Desert Engineering, LLC

#### FILING REQUIREMENTS:

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month), and must include the following:

1. One .pdf of the entire application, and ten (10) 24" x 36" copies of the final plat folded to a size not to exceed 9"x12" provided by a properly licensed surveyor, as well as one (1) set of reproducible plans 8 1/2" x 11" in size and any required supporting data, prepared in accordance with Section 3-3-8 of Elko City Code (see attached checklist).
2. Pre-Submission Requirements:
  - a. The final plat shall meet all requirements of the zoning district in which located, and any necessary zoning amendment shall have been adopted by the Elko City Council prior to filing of the final plat.
  - b. The final plat shall conform closely to the approved preliminary plat and be prepared in accordance with the provisions of the City Subdivision Ordinance.
  - c. The final plat submittal shall include a letter signifying approval of utility easements by all public utilities involved, and shall be so indicated by an affidavit on the map.
  - d. A complete set of construction plans for all public improvements associated with the final plat shall have been approved or substantially approved by the City Engineer.

**Fee:** \$750.00 + \$25.00 per lot including remainder parcels; non-refundable.

**Other Information:** The applicant is encouraged to submit other information and documentation to support the request.

RECEIVED

### Final Plat Checklist 3-3-8

<b>Identification Data</b>	
✓	Subdivision Name
✓	Location and Section, Township and Range
✓	Name, address and phone number of subdivider
✓	Name, address and phone number of engineer/surveyor
✓	Scale, North Point and Date of Preparation
✓	Location maps
<b>Survey Data (Required)</b>	
✓	Boundaries of the Tract fully balanced and closed
✓	Any exception within the plat boundaries
✓	The subdivision is to be tied to a section corner
✓	Location and description of all physical encroachments
<b>Descriptive Data</b>	
✓	Street Layout, location, widths, easements
✓	All drainageways, designated as such
✓	All utility and public service easements
✓	Location and dimensions of all lots, parcels
✓	Residential Lots shall be numbered consecutively
✓	All sites to be dedicated to the public and proposed use
✓	Location of all adjoining subdivisions with name date, book and page
	Any private deed restrictions to be imposed upon the plat
<b>Dedication and Acknowledgment</b>	
✓	Statement of dedication for items to be dedicated
✓	Execution of dedication acknowledged by a notary public
<b>Additional Information</b>	
✓	Street CL, and Monuments identified
✓	Street CL and width shown on map
✓	Location of mounuments used to determine boudaries
✓	Each city boundary line crossing or adjoining the subdivision
✓	Section lines crossing the subdivision boundaries
<b>City Engineer to Check</b>	
✓	Closure report for each of the lots
✓	Civil Improvement plans
✓	Estimate of quantities required to complete the improvements
<b>Required Certifications</b>	
✓	All parties having record title in the land to be subdivided
✓	Offering for dedication
✓	Clerk of each approving governing body
✓	Easements
✓	Surveyor's Certificate
✓	City Engineer
✓	State Health division
✓	State Engineer
✓	Division of Water Resources
✓	City Council

**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I acknowledge that, if approved, I must provide an AutoCAD file containing the final subdivision layout on NAD 83 NV East Zone Coordinate System to the City Engineering Department when requesting final map signatures for recording.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent:** BDSA, LLC  
(Please print or type)

**Mailing Address:** 312 Four Mile Trail  
Street Address or P.O. Box  
Elko, NV 89801  
City, State, Zip Code

Phone Number: (775) 340-6005

Email address: scott@macritchie.com

**SIGNATURE:** Scott Macritchie

**FOR OFFICE USE ONLY**

File No.: 8-20 Date Filed: 9/4/20 Fee Paid: \$900 CE# 15915

5 Lots + remainder =  $6 \times \$25 = \$150$   
 $+750$   
\$900

# **LOT CALCULATIONS**

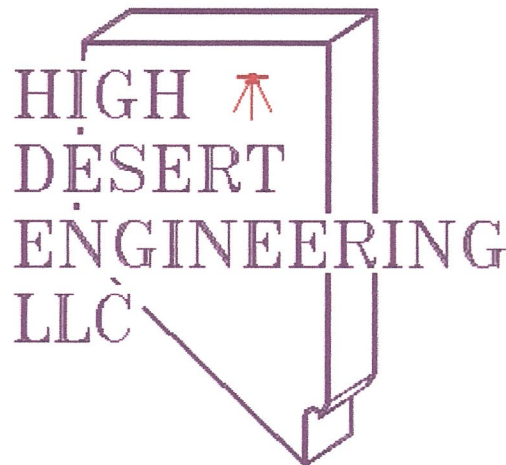
**FOR**

## **TOWER HILL SUBDIVISION UNIT NUMBER 4 ELKO, NEVADA**

**PREPARED FOR:**

**BDSA, LLC  
312 Four Mile Trail  
Elko, Nevada 89801**

**Contact:  
Scott MacRitchie  
(775) 340-6005**



**PREPARED BY**

**HIGH DESERT Engineering  
640 Idaho Street  
Elko, Nevada**

May, 2020

Parcel name: LOT 401

North: 12627.613                      East : 60352.775  
Line Course: N 58-33-45 W Length: 102.62  
North: 12681.136                      East : 60265.218  
Line Course: N 41-54-22 E Length: 83.64  
North: 12743.385                      East : 60321.082  
Line Course: S 48-05-38 E Length: 100.00  
North: 12676.593                      East : 60395.506  
Line Course: S 41-54-22 W Length: 55.00  
North: 12635.660                      East : 60358.771  
Curve Length: 10.05                      Radius: 55.00  
Delta: 10-28-07                      Tangent: 5.04  
Chord: 10.04                      Course: S 36-40-18 W  
Course In: S 48-05-38 E              Course Out: N 58-33-45 W  
RP North: 12598.925                      East : 60399.704  
End North: 12627.611                      East : 60352.778

Perimeter: 351.31    Area: 7,443 SF 0.171 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.004                      Course: S 62-37-08 E  
Error North: -0.0017                      East : 0.0033  
Precision 1: 87,827.50

-----  
Parcel name: LOT 402

North: 12582.544                      East : 60347.198  
Line Course: S 76-58-33 W Length: 87.29  
North: 12562.872                      East : 60262.153  
Line Course: S 41-54-22 W Length: 207.45  
North: 12408.480                      East : 60123.595  
Line Course: N 33-38-48 W Length: 79.22  
North: 12474.428                      East : 60079.702  
Line Course: N 41-54-22 E Length: 277.75  
North: 12681.141                      East : 60265.214  
Line Course: S 58-33-45 E Length: 102.62  
North: 12627.617                      East : 60352.770  
Curve Length: 46.81                      Radius: 55.00  
Delta: 48-46-02                      Tangent: 24.93  
Chord: 45.41                      Course: S 07-03-14 W  
Course In: S 58-33-45 E              Course Out: S 72-40-13 W  
RP North: 12598.931                      East : 60399.697  
End North: 12582.548                      East : 60347.194

Perimeter: 801.15    Area: 25,582 SF 0.587 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.006                      Course: N 45-08-00 W  
Error North: 0.0041                      East : -0.0041  
Precision 1: 133,523.33



Parcel name: LOT 403

North: 12549.318 East : 60375.954  
Line Course: S 28-40-49 W Length: 114.40  
North: 12448.953 East : 60321.051  
Line Course: S 41-54-22 W Length: 192.90  
North: 12305.389 East : 60192.211  
Line Course: N 33-38-48 W Length: 123.84  
North: 12408.482 East : 60123.595  
Line Course: N 41-54-22 E Length: 207.45  
North: 12562.875 East : 60262.153  
Line Course: N 76-58-33 E Length: 87.29  
North: 12582.547 East : 60347.197  
Curve Length: 45.20 Radius: 55.00  
Delta: 47-05-26 Tangent: 23.97  
Chord: 43.94 Course: S 40-52-30 E  
Course In: N 72-40-13 E Course Out: S 25-34-47 W  
RP North: 12598.930 East : 60399.701  
End North: 12549.321 East : 60375.954

Perimeter: 771.10 Area: 31,650 SF 0.727 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.003 Course: N 04-44-46 W  
Error North: 0.0029 East : -0.0002  
Precision 1: 257,026.67

-----  
Parcel name: LOT 404

North: 12546.270 East : 60415.584  
Line Course: S 16-47-07 E Length: 171.84  
North: 12381.752 East : 60465.209  
Line Course: S 43-20-42 W Length: 276.68  
North: 12180.541 East : 60275.299  
Line Course: N 33-38-48 W Length: 149.97  
North: 12305.386 East : 60192.205  
Line Course: N 41-54-22 E Length: 192.90  
North: 12448.950 East : 60321.045  
Line Course: N 28-40-49 E Length: 114.40  
North: 12549.314 East : 60375.948  
Curve Length: 40.67 Radius: 55.00  
Delta: 42-21-54 Tangent: 21.31  
Chord: 39.75 Course: S 85-36-10 E  
Course In: N 25-34-47 E Course Out: S 16-47-07 E  
RP North: 12598.924 East : 60399.695  
End North: 12546.267 East : 60415.579

Perimeter: 946.46 Area: 47,055 SF 1.080 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.006 Course: S 60-44-46 W  
Error North: -0.0031 East : -0.0056  
Precision 1: 157,743.33

Parcel name: LOT 405

North: 12584.812                      East : 60452.859  
Line Course: S 49-52-21 E Length: 148.59  
North: 12489.047                      East : 60566.473  
Line Course: S 43-20-42 W Length: 147.54  
North: 12381.751                      East : 60465.203  
Line Course: N 16-47-07 W Length: 171.84  
North: 12546.269                      East : 60415.578  
Curve Length: 56.01                      Radius: 55.00  
Delta: 58-20-39                      Tangent: 30.70  
Chord: 53.62                      Course: N 44-02-34 E  
Course In: N 16-47-07 W              Course Out: S 75-07-46 E  
RP North: 12598.926                      East : 60399.695  
End North: 12584.811                      East : 60452.853

Perimeter: 523.98    Area: 14,714 SF 0.338 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.006                      Course: S 83-20-04 W  
Error North: -0.0008                      East : -0.0064  
Precision 1: 87,330.00

-----  
Parcel name: PARCEL D

North: 12094.443                      East : 61040.515  
Line Course: N 89-44-13 W Length: 710.09  
North: 12097.703                      East : 60330.432  
Line Course: N 33-38-48 W Length: 99.51  
North: 12180.543                      East : 60275.297  
Line Course: N 43-20-42 E Length: 424.22  
North: 12489.050                      East : 60566.477  
Line Course: S 70-45-36 E Length: 70.62  
North: 12465.779                      East : 60633.153  
Line Course: S 82-16-23 E Length: 93.73  
North: 12453.176                      East : 60726.032  
Line Course: S 89-55-03 E Length: 210.00  
North: 12452.874                      East : 60936.032  
Line Course: N 00-04-57 E Length: 90.99  
North: 12543.864                      East : 60936.163  
Line Course: S 89-55-03 E Length: 105.00  
North: 12543.713                      East : 61041.162  
Line Course: S 00-04-57 W Length: 449.26  
North: 12094.453                      East : 61040.516

Perimeter: 2253.42    Area: 248,191 SF 5.698 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.010                      Course: N 03-36-20 E  
Error North: 0.0099                      East : 0.0006  
Precision 1: 225,342.00

Parcel name: UNIT 4 STREET

North:	12676.595	East :	60395.503
Line	Course: S 47-34-46 E	Length:	62.86
	North:	12634.192	East : 60441.907
Curve	Length:	251.30	Radius: 55.00
	Delta:	261-47-12	Tangent: 63.51
	Chord:	83.15	Course: N 88-59-14 W
	Course In:	S 50-07-10 W	Course Out: N 48-05-38 W
	RP North:	12598.927	East : 60399.701
	End North:	12635.662	East : 60358.768
Line	Course: N 41-54-22 E	Length:	55.00
	North:	12676.595	East : 60395.503

Perimeter: 369.16 Area: 10,136 SF 0.233 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure:	0.000	Course:	S 03-39-03 W
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Error North:	-0.0003	East :	-0.0000
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Precision 1: 369,160,000.00

Parcel name: UNIT 4 TOTAL

North:	12094.443	East :	61040.515
Line	Course: N 89-44-13 W	Length:	710.09
	North: 12097.703	East :	60330.432
Line	Course: N 33-38-48 W	Length:	452.53
	North: 12474.421	East :	60079.699
Line	Course: N 41-54-22 E	Length:	361.39
	North: 12743.382	East :	60321.076
Line	Course: S 48-05-38 E	Length:	100.00
	North: 12676.591	East :	60395.500
Line	Course: S 47-34-46 E	Length:	62.86
	North: 12634.188	East :	60441.904
Curve	Length: 52.56	Radius:	55.00
	Delta: 54-45-04	Tangent:	28.48
	Chord: 50.58	Course:	S 12-30-18 E
	Course In: S 50-07-10 W	Course Out:	S 75-07-46 E
RP	North: 12598.922	East :	60399.698
End	North: 12584.807	East :	60452.856
Line	Course: S 49-52-21 E	Length:	148.59
	North: 12489.042	East :	60566.470
Line	Course: S 70-45-36 E	Length:	70.62
	North: 12465.771	East :	60633.145
Line	Course: S 82-16-23 E	Length:	93.73
	North: 12453.169	East :	60726.024
Line	Course: S 89-55-03 E	Length:	210.00
	North: 12452.867	East :	60936.024
Line	Course: N 00-04-57 E	Length:	90.99
	North: 12543.857	East :	60936.155
Line	Course: S 89-55-03 E	Length:	105.00
	North: 12543.705	East :	61041.155
Line	Course: S 00-04-57 W	Length:	449.26
	North: 12094.446	East :	61040.508

Perimeter: 2907.63    Area: 384,771 SF 8.833 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.007    Course: N 69-10-28 W

Error North: 0.0026    East : -0.0069

Precision 1: 415,374.29

# TOWER HILL SUBDIVISION – UNIT NUMBER 4

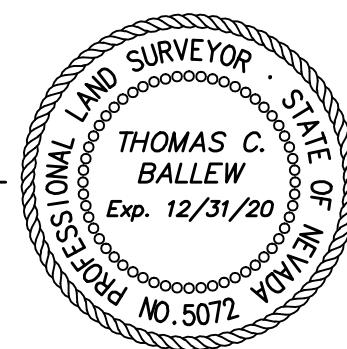
## ELKO, ELKO COUNTY, NEVADA

### LAND SURVEYOR'S CERTIFICATE:

I, THOMAS C. BALLEW, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

- THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY SUPERVISION AND DIRECTION AT THE INSTANCE BDSA, LLC.
- THE LANDS SURVEYED LIE WITHIN SECTION 13, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.& M., AND THE SURVEY WAS COMPLETED ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.
- THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
- THE MONUMENTS DEPICTED ON THE PLAT ARE OF THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED HEREON AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

THOMAS C. BALLEW, P.L.S. No. 5072



DATE

### CITY ENGINEER'S REPRESENTATIVE CERTIFICATE:

I, \_\_\_\_\_, REPRESENTATIVE FOR THE CITY ENGINEER OF THE CITY OF ELKO, NEVADA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND FIND IT SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, WITH ALL APPROVED ALTERATIONS; THAT ALL PROVISIONS OF N.R.S. 278.010 THROUGH 278.630, INCLUSIVE, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH; THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT; AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THE MONUMENTS HAVE NOT BEEN SET AND THAT A PROPER PERFORMANCE BOND HAS BEEN DEPOSITED GUARANTEEING THEIR SETTING ON OR BEFORE \_\_\_\_\_.

CITY OF ELKO CITY ENGINEER'S REPRESENTATIVE

DATE

### APPROVAL – CITY OF ELKO PLANNING COMMISSION

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, PLANNING COMMISSION HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A TENTATIVE MAP OF THIS SUBDIVISION WAS DULY AND REGULARLY APPROVED PURSUANT TO N.R.S. 278.330. THIS FINAL MAP SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE MAP AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

CHAIRMAN, CITY OF ELKO PLANNING COMMISSION

DATE

### APPROVAL – CITY OF ELKO CITY COUNCIL

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, CITY COUNCIL HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. ALL OFFERS OF DEDICATION, AS SHOWN HEREON, WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO, NEVADA

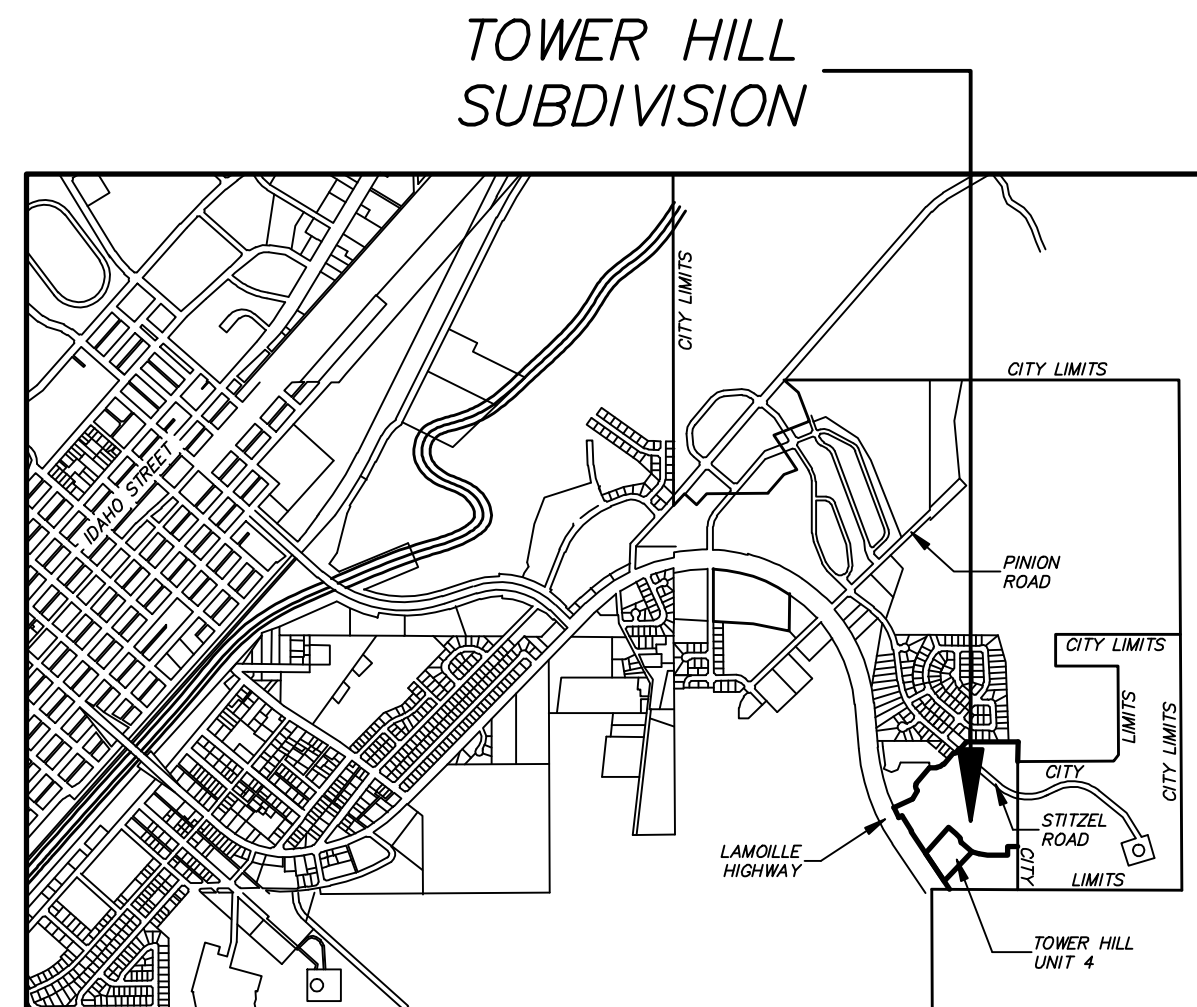
DATE

ATTEST: CITY CLERK, CITY OF ELKO, NEVADA

DATE

### LEGAL DESCRIPTION:

PARCEL B AS SHOWN ON THE FINAL MAP OF TOWER HILL SUBDIVISION, UNIT NUMBER 1, FILED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA, AT FILE NUMBER 741117.



## VICINITY MAP

### APPROVAL – NEVADA DIVISION OF WATER RESOURCES

THIS FINAL MAP IS APPROVED BY THE DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY SUBJECT TO REVIEW OF APPROVAL ON FILE AT THIS OFFICE.

NEVADA DIVISION OF WATER RESOURCES

DATE

### APPROVAL – NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

THIS FINAL MAP IS APPROVED BY THE NEVADA DIVISION OF ENVIRONMENTAL PROTECTION OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES. THIS APPROVAL CONCERNS SEWAGE DISPOSAL, WATER POLLUTION, WATER QUALITY AND WATER SUPPLY FACILITIES AND IS PREDICATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMUNITY SYSTEM FOR DISPOSAL OF SEWAGE.

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER POLLUTION CONTROL

DATE

### ASSESSOR'S CERTIFICATE:

I, KATRINKA RUSSELL, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBER SHOWN ON THIS PLAT IS CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF SAID ASSESSOR'S PARCEL NUMBER 001-929-125.

ELKO COUNTY ASSESSOR

DATE

### TREASURER'S CERTIFICATE:

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL NUMBER 001-929-125 HAVE BEEN PAID FOR THIS FISCAL YEAR.

ELKO COUNTY TREASURER

DATE

### OWNER'S CERTIFICATE:

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, SCOTT MACRITCHIE, MANAGING DIRECTOR OF BDSA, LLC, BEING THE OWNER OF THOSE PARCELS AS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFERS FOR DEDICATION ALL OF THE RIGHTS-OF-WAY AND EASEMENTS FOR PUBLIC ACCESS, PUBLIC UTILITY AND PUBLIC DRAINAGE PURPOSES AS DESIGNATED HEREON. IN WITNESS I, SCOTT MACRITCHIE, SET MY HAND ON THE DATE SHOWN.

BDSA, LLC

BY: SCOTT MACRITCHIE, MANAGING DIRECTOR

DATE

STATE OF NEVADA }  
COUNTY OF ELKO } S.S.

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY SCOTT MACRITCHIE, MANAGING DIRECTOR OF BDSA, LLC.

NOTARY PUBLIC IN AND FOR ELKO COUNTY, NEVADA

MY COMMISSION EXPIRES: \_\_\_\_\_

### APPROVAL – PUBLIC UTILITY EASEMENTS

THE PUBLIC UTILITY EASEMENTS, AS DESIGNATED HEREON, ARE APPROVED BY THE RESPECTIVE PUBLIC UTILITIES EXECUTING BELOW.

FRONTIER COMMUNICATIONS

DATE

SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY

DATE

SOUTHWEST GAS CORPORATION

DATE

ZITO MEDIA

DATE

### ELKO COUNTY RECORDER:

FILE NUMBER: \_\_\_\_\_

FILED AT THE REQUEST OF: \_\_\_\_\_

DATE: \_\_\_\_\_

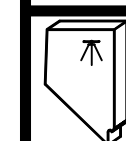
TIME: \_\_\_\_\_

D. MIKE SMALES, ELKO COUNTY RECORDER

SHEET 1 OF 2

## FINAL MAP OF TOWER HILL SUBDIVISION UNIT NUMBER 4

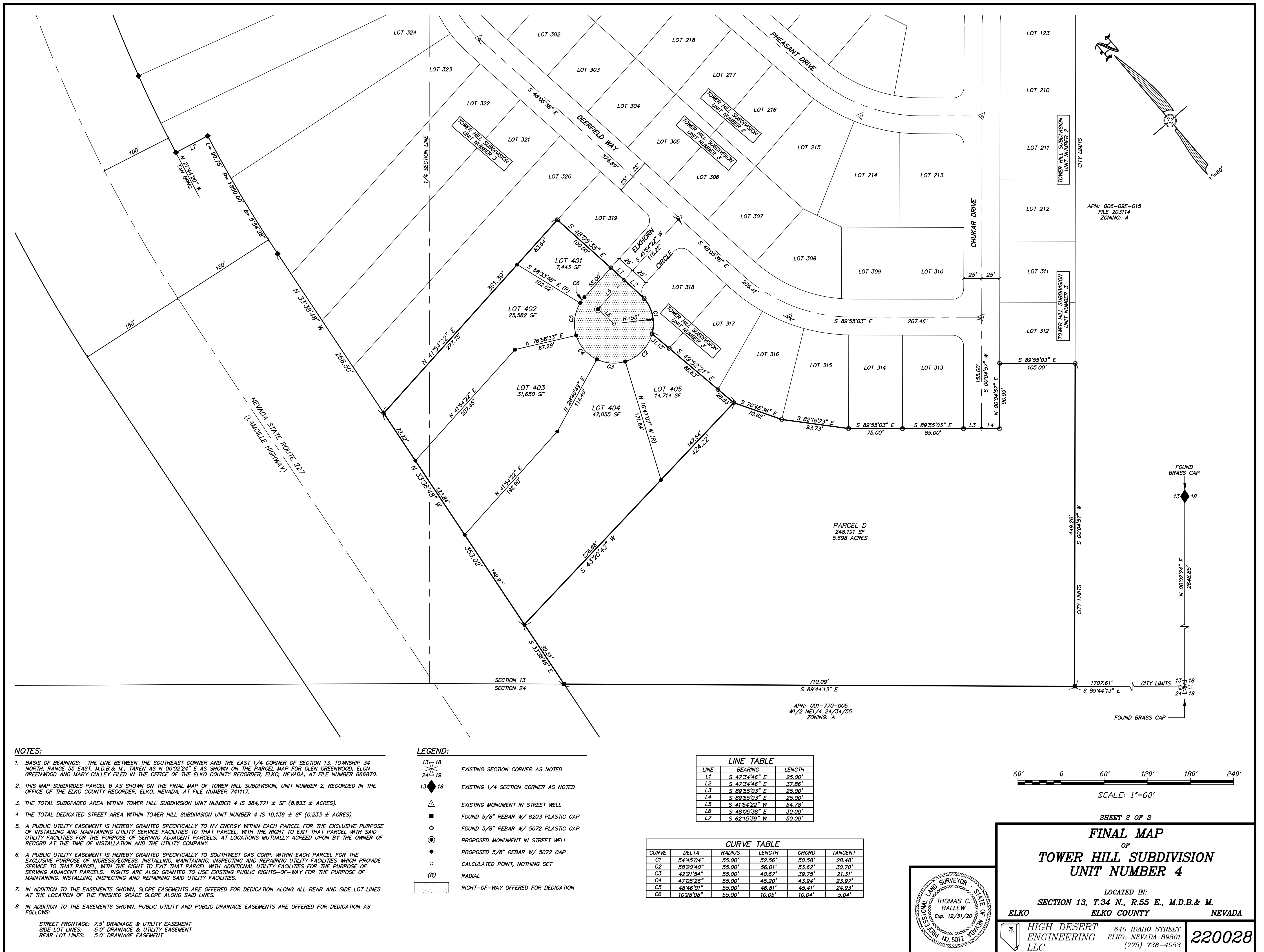
LOCATED IN:  
SECTION 13, T.34 N., R.55 E., M.D.B.& M.  
ELKO ELKO COUNTY NEVADA



HIGH DESERT  
ENGINEERING  
LLC

640 IDAHO STREET  
ELKO, NEVADA 89801  
(775) 738-4053

220028



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible recommendation to City Council for Vacation No. 4-20, filed by Grace Baptist Church, for the vacation of a 25' wide public utility easement bisecting APN 001-610-112, consisting of an area approximately 9,944 sq. ft., and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 3, 2020**
3. Agenda Category: **NEW BUSINESS, MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant is in the process of selling the parcel to a developer who would prefer to have the public easement run along the property line. The applicant will be granting a new public utility easement to the City of Elko in lieu of this easement. CL**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 4-20 based on facts, findings and conditions as presented in the Staff Report dated October 20, 2020.**
9. Findings: **See Staff Report dated October 20, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Grace Baptist Church  
John Ferricks  
3030 North Fifth Street  
Elko, NV 89801  
[tgmd1@citlink.net](mailto:tgmd1@citlink.net)**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 11/3**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Vacation No. 4-20

Applicant(s): Grace Baptist Church

Site Location: 3030 N. 5<sup>th</sup> Street - APN 001-610-112

Current Zoning: R Date Received: 9/28 Date Public Notice: N/A

COMMENT: This is to vacate a 25' wide Public Utility Easement  
that bisects APN 001-610-112

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 10/23/2020

Recommend approval

SAW

Initial

City Manager: Date: 10/23/2020

No comments/concerns.

cy

Initial





City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

**MEMO DATE:** October 20, 2020  
**CITY COUNCIL PETITION DATE:** October 13, 2020  
**PLANNING COMMISSION DATE:** November 3, 2020  
**APPLICATION NUMBER:** Vacation 4-20  
**APPLICANT:** Grace Baptist Church  
**PROJECT DESCRIPTION:** APN 001-610-112

**Vacation of a 25' wide public utility easement bisecting APN 001-610-112**



### **STAFF RECOMMENDATION:**

RECOMMEND to APPROVE subject to findings of fact and conditions stated in this report.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-610-112

**PARCEL SIZE:** 2.756 acres

**EXISTING ZONING:** (R) Single Family Multiple Family Residential

**MASTER PLAN DESIGNATION:** (MED- RES) Medium Density Residential

**EXISTING LAND USE:** Undeveloped

### **BACKGROUND:**

1. The property is currently undeveloped.
2. The easement was granted by Parcel Map File #439506. The map was signed by both Grace Baptist Church and the City of Elko.
3. The easement was designed for public sewer for the parcels to the northwest.

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:  
North: Agricultural / Undeveloped  
East: Residential / Partially developed  
South: Residential / Developed  
West: Residential / Partially developed

### **PROPERTY CHARACTERISTICS:**

The property is currently undeveloped.  
The property has moderate sloping.  
The property is lacking public improvements along Dakota Dr. frontage.  
The easement doesn't appear to have any public utilities installed within the existing easement at this time.

### **MASTER PLAN AND CITY CODES:**

Applicable Master Plans and City Code Sections are:

NRS 278.479 to 278.480, inclusive  
City of Elko Master Plan – Land Use Component  
City of Elko Master Plan – Transportation Component  
City of Elko Redevelopment Plan  
City of Elko Code – Section 8-7 Street Vacation Procedures

### **NRS 278.479 to 278.480**

- ) Except as otherwise provided in subsection 6, if, upon public hearing, the governing body, or the planning commission, hearing examiner or other designee, if authorized to take final action by the governing body, is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The

governing body, or the planning commission, hearing examiner or other designee, if authorized to take final action by the governing body, may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed

Due to the fact the easement is not currently being used, staff feels that vacating this easement will not materially injure the public.

**MASTER PLAN – Land Use:**

1. The Master Plan Land Use Atlas shows the area as Medium Density Residential.
2. R- Single Family and Multiple Family Residential is a corresponding zoning district for Medium Density Residential.

The proposed vacation is in conformance with the Master Plan Land Use component.

**MASTER PLAN - Transportation:**

1. The area is accessed from Dakota Drive.
2. Dakota Drive is classified as a Residential local.
3. The property is lacking public improvements along Dakota Dr.

The proposed vacation is in conformance with the Master Plan Transportation Component.

**REDEVELOPMENT PLAN**

- ) The area is located outside the Redevelopment Area.

**ELKO CITY CODE 8-7-3-STREET VACATION PROCEDURE**

1. If it is determined by a majority vote of the city council that it is in the best interest of the city and that no person will be materially injured thereby, the city council, by motion, may propose the realignment, change, vacation, adjustment or abandonment of any street or any portion thereof. In addition, any abutting owner desiring the vacation of any street or easement or portion thereof shall file a petition in writing with the city council and the city council shall consider said petition as set forth above.

- ) The City Council accepted the petition at their meeting on October 13, 2020 and referred the matter to the Planning Commission for further consideration.

2. Except for a petition for the vacation or abandonment of an easement for a public utility owned or controlled by the city, the petition or motion shall be referred to the planning commission, which shall report its findings and recommendations thereon to the city council. The petitioner shall, prior to the consideration of the petition by the planning commission, pay a filing fee to the city in an amount established by resolution of the city council and included in the appendix to this code.

- ) The filing fee was paid by the applicant.

3. Whenever any street, easement or portion thereof is proposed to be vacated or abandoned, the city council shall notify by certified mail each owner of property abutting the proposed vacation or abandonment and cause a notice to be published at least once in

a newspaper of general circulation in the city setting forth the extent of the proposed vacation or abandonment and setting a date for public hearing, which date may be not less than ten (10) days and not more than forty (40) days subsequent to the date the notice is first published.

4. Order of City Council: Except as provided in subsection E of this section, if, upon public hearing, the City Council is satisfied that the public will not be materially injured by the proposed vacation or abandonment, and that it is in the best interest of the city, it shall order the street vacated or abandoned. The city council may make the order conditional, and the order shall become effective only upon the fulfillment of the conditions prescribed.

The proposed vacation with the recommended conditions is in conformance with Section 8-7 of City code. The public will not be materially injured by the vacation as the public utility easement is not currently being utilized and the applicant is granting a new public utility easement to the City of Elko.

### **FINDINGS**

1. The proposed vacation is in conformance with the City of Elko Master Plan Land Use Component.
2. The proposed vacation is in conformance with the City of Elko Master Plan Transportation component.
3. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive.
4. The vacation is not materially detrimental to the public.
5. The existing easement contains no public infrastructure (water, sewer, etc.) Vacating this easement would not result in the need or expense to relocate any pipes, which may then result in an interruption to service. Therefore, the vacation is not materially detrimental to the public.
6. The proposed vacation is not located within the Redevelopment Area.
7. The proposed vacation is in conformance with Elko City Code 8-7.

### **STAFF RECOMMENDATION:**

Staff recommends the Planning Commission forward a recommendation to City Council to adopt a resolution which conditionally APPROVES the proposed vacation with the following conditions included in the resolution:

1. The applicant is responsible for all costs associated with the recordation of the vacation.
2. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

3. Correct the discrepancy between the legal description and display map in the dimension that is 397.27' or 397.77 feet.
4. New public utility/drainage easement to be recorded prior to final City Council consideration of this vacation.



# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

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October 26, 2020

Grace Baptist Church  
Attn: John Ferricks  
3030 North Fifth Street  
Elko, NV 89801  
Via Email: [tgmdl@citlink.net](mailto:tgmdl@citlink.net)

Re: Vacation No. 4-20

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: <https://global.gotomeeting.com/join/928163245>. You can also dial in using your phone at **+1 (408) 650-3123**. The **Access Code** for this meeting is **928-163-245**.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

  
Shelby Archuleta  
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Bob Morley, 640 Idaho Street, Elko, NV 89801  
Via Email: [remorley@frontiernet.net](mailto:remorley@frontiernet.net)



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

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October 15, 2020

Frontier Communication  
**Mr. John Poole**  
1520 Church Street  
Gardnerville, NV 89410

SUBJECT: Proposed Vacation No. 4-20

Dear Mr. Poole:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

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October 15, 2020

Southwest Gas Corporation  
**Engineering Department**  
PO Box 1190  
Carson City, NV 89702-1190  
[nndengineering@swgas.com](mailto:nndengineering@swgas.com)

SUBJECT: Proposed Vacation No. 4-20

To Whom It May Concern:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures





October 26, 2020

Shelby Archuleta  
City of Elko Planning Department  
1751 College Avenue  
Elko, Nevada 89801

RE: Proposed Vacation No. 4-20 Grace Baptist Church

Dear Ms. Archuleta:

Per your request in the letter dated October 15, 2020 regarding the proposed vacation of the 25' Public Utility Easement that bisects APN 001-610-112. NV Energy does not have facilities within the area to be vacated.

If you have any questions/concerns please feel free to contact me at 775-834-5430 or at [katherineperkins@nvenergy.com](mailto:katherineperkins@nvenergy.com)

Sincerely,

*Katherine Perkins*

Katherine Perkins  
NV Energy



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

---

October 15, 2020

NV Energy  
**Mr. Jake Johnson**  
6100 Neil Road  
Reno, NV 89511

SUBJECT: Proposed Vacation No. 4-20

Dear Mr. Johnson:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

*Utah's premier fiber network...Rethink Speed.*

**BEEHIVE**  
**BROADBAND**

October 26, 2020

City of Elko Planning Department  
1751 College Avenue  
Elko, NV 89801

SUBJECT: Proposed Vacation No. 4-20

To whom it may concern,

We do not have any plant in the proposed area. If you have any questions or concerns, please contact us.

Thank you,



Taylor Hulett  
Beehive Engineering Team



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)

Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

---

October 15, 2020

Beehive Broadband  
2000 N. Sunset Road  
Lake Point, UT 84074

SUBJECT: Proposed Vacation No. 4-20

To Whom It May Concern:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

## Shelby Archuleta

---

**From:** Joshua Lopac <joshua.lopac@zitomedia.com>  
**Sent:** Thursday, October 15, 2020 4:02 AM  
**To:** Shelby Archuleta; Dustin Hurd  
**Subject:** Re: Proposed Vacation No. 4-20 Grace Baptist Church

TO: Shelby Archuleta

I have reviewed and verified that Zito Media does not currently have a vested interest in existing easement. Future location of easement is acceptable for future use. If you need a signature for this, please let me know and I can arrange to stop by and sign.

Thank you

On 10/14/2020 2:13 PM, Shelby Archuleta wrote:

Good Morning,  
Please see attached correspondence regarding Vacation No. 4-20.  
Let me know if you have any questions.

Thank you!

Shelby Archuleta  
Planning Technician  
City of Elko  
Planning Department  
Ph (775) 777-7160  
FX (775) 777-7219

--

Joshua Lopac  
[joshua.lopac@zitomedia.com](mailto:joshua.lopac@zitomedia.com)  
Technical Operations Manager  
California, Nevada, Idaho, Washington  
(775) 385-4333



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

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October 15, 2020

Zito Media

**Mr. Dustin Hurd**

VIA Email: [dustin.hurd@zitomedia.com](mailto:dustin.hurd@zitomedia.com)

SUBJECT: Proposed Vacation No. 4-20

Dear Mr. Hurd:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

## Shelby Archuleta

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**From:** Pamela Lattin <p.lattin@canyonconstructionco.com>  
**Sent:** Wednesday, October 14, 2020 12:16 PM  
**To:** Shelby Archuleta  
**Subject:** RE: Proposed Vacation No. 4-20 Grace Baptist Church

Shelby, I have reviewed the Vacation No. 4-20 and Elko Heat Company does NOT have any geothermal water lines in the vicinity of this property/vacation of land.

Pamela Lattin, Secretary/Treasurer  
Elko Heat Company

Pamela Lattin  
Secretary/Treasurer  
Canyon Construction Company  
PO Box 2030 Elko, NV 89801  
775.738.2210 x 106  
775.934.1934 (cell)

**From:** Shelby Archuleta <sarchuleta@elkocitynv.gov>  
**Sent:** Wednesday, October 14, 2020 11:02 AM  
**To:** Pamela Lattin <p.lattin@canyonconstructionco.com>  
**Subject:** Proposed Vacation No. 4-20 Grace Baptist Church

Good Morning,  
Please see attached correspondence regarding Vacation No. 4-20.  
Let me know if you have any questions.

Thank you!

Shelby Archuleta  
Planning Technician  
City of Elko  
Planning Department  
Ph (775) 777-7160  
FA (775) 777-7219



# CITY OF ELKO

Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)

Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

---

October 15, 2020

Elko Heat  
P.O. Box 2347  
Elko, NV 89803

SUBJECT: Proposed Vacation No. 4-20

To Whom It May Concern:

Please be advised that the City of Elko Planning Department is processing a request filed by Grace Baptist Church to vacate the 25' wide Public Utility Easement that bisects APN 001-610-112. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to keep responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 3, 2020. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures





## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801 \*

(775) 777-7160 \* (775) 777-7119 fax

### APPLICATION FOR VACATION OF CITY STREET, EASEMENT OR OTHER PUBLIC RIGHT-OF-WAY

APPLICANT(s): Grace Baptist Church  
MAILING ADDRESS: 3030 North Fifth Street, Elko, Nevada 89801  
PHONE NO (Home) (775) 340-4942 (Business) \_\_\_\_\_  
NAME OF PROPERTY OWNER (If different): \_\_\_\_\_  
(Property owner's consent in writing must be provided.)  
MAILING ADDRESS: Same as Applicant  
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):  
ASSESSOR'S PARCEL NO.: 001-610-112 Address 3030 North Fifth Street  
Lot(s), Block(s), & Subdivision \_\_\_\_\_  
Or Parcel(s) & File No. Parcel 1B, File No. 646026

#### FILING REQUIREMENTS:

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. Applications go before the City Council, Planning Commission, and back to City Council twice.

**Fee:** A \$600.00 non-refundable fee.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information must be provided.

**Legal Description:** A complete legal description of the area proposed for vacation along with an exhibit depicting the area for vacation.

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support the request.

RECEIVED

<u>Legion Construction and Development LLC</u> (Name)	<u>599 Shadybrook Dr., Spring Creek, NV 89815</u> (Address)
--	--

[illegible]

1. Describe the nature of the request: The existing easement traverses the property in a location that will hinder development. The applicants would like to vacate this easement in order to more easily develop the property. A replacement easement is being offered to the City that will serve this parcel and adjacent parcels for utility purposes.
2. Describe any utilities currently located in the area proposed for vacation, and if any are present how they will be addressed: None known.

**Use additional pages if necessary**

**This area intentionally left blank**

**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** John Ferricks, President of Grace Baptist Church  
(Please print or type)

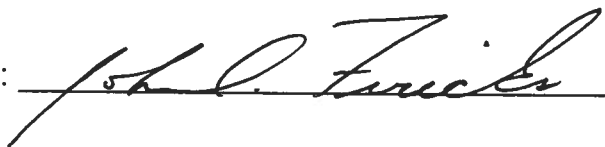
**Mailing Address** 3030 North Fifth Street  
Street Address or P.O. Box

Elko, Nevada 89801  
City, State, Zip Code

Phone Number: (775) 340-4942

Email address: tgmd1@citlink.net

**SIGNATURE:**



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**FOR OFFICE USE ONLY**

File No.: 4-20 Date Filed: 9/28/26 Fee Paid: \$ 600.00 CL# 15961

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SEP 28 2020

**EXHIBIT A**  
**25' PUBLIC UTILITY EASEMENT**  
**TO BE VACATED**  
September 24, 2020

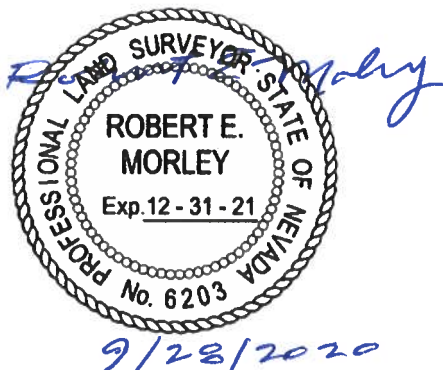
An Easement for utility purposes located in Section 9, T.34 N., R.55 E., M.D.B. & M., City of Elko, Nevada, being 25.00 feet in width, lying 12.50 feet on each side of the following described centerline:

Commencing at the most Southerly Corner of Parcel 1B, as shown on the Parcel Map for Grace Baptist Church, on file in the Office of the Elko County Recorder, Elko, Nevada, at File No. 646026, thence N 41° 32' 17" E, 34.73 feet along the Southeasterly Line of said Parcel 1B to Corner No. 1, the True Point of Beginning;

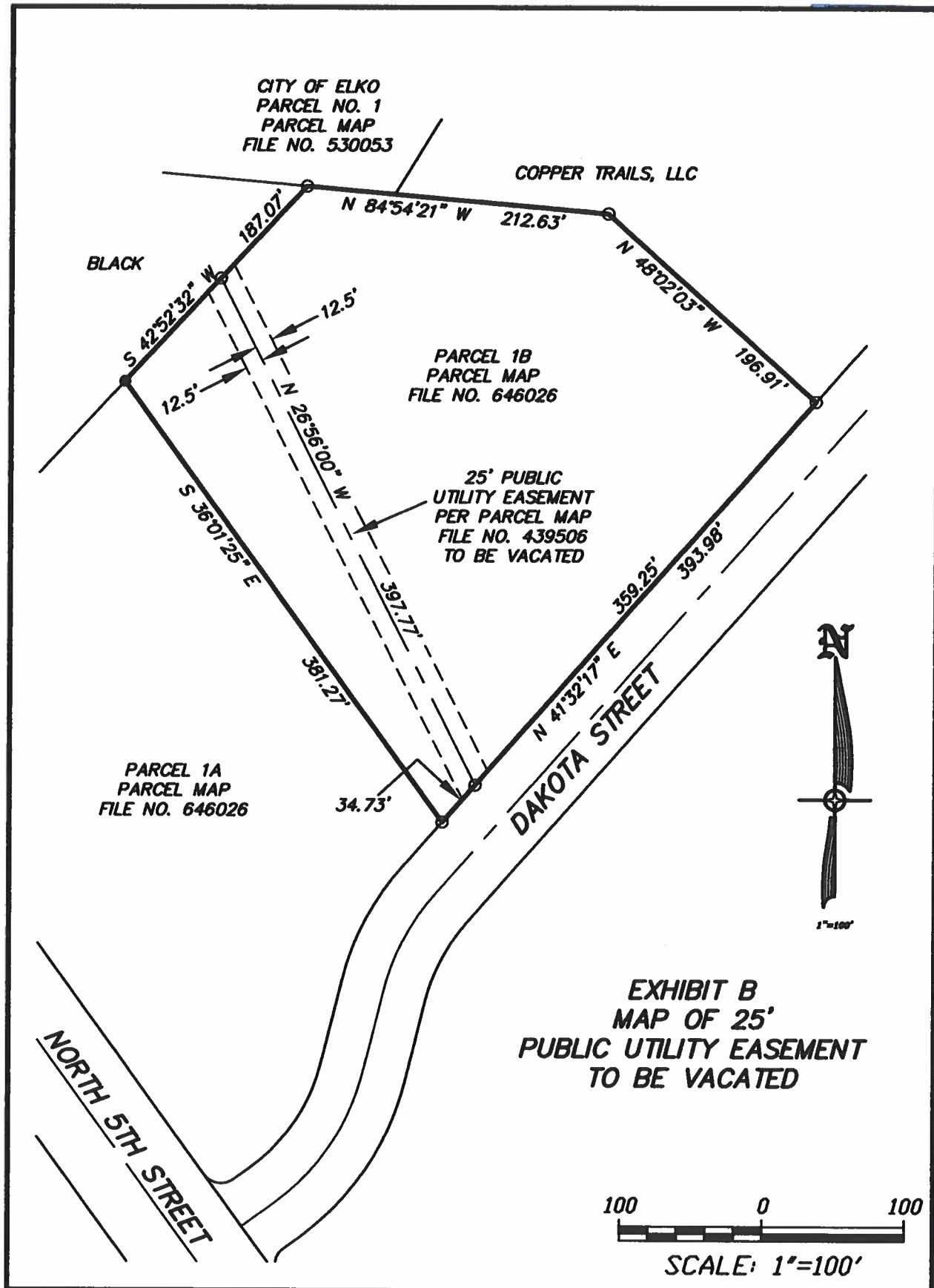
Thence N 26° 56' 00" W, 397.27 feet to Corner No. 2, a point being on the Northwesterly Line of said Parcel 1B, the point of Ending;

The sidelines of the above described easement are to be shortened or lengthened so as to begin on the said Southeasterly Line of Parcel 1B and terminate on the said Northwesterly Line of Parcel 1B.

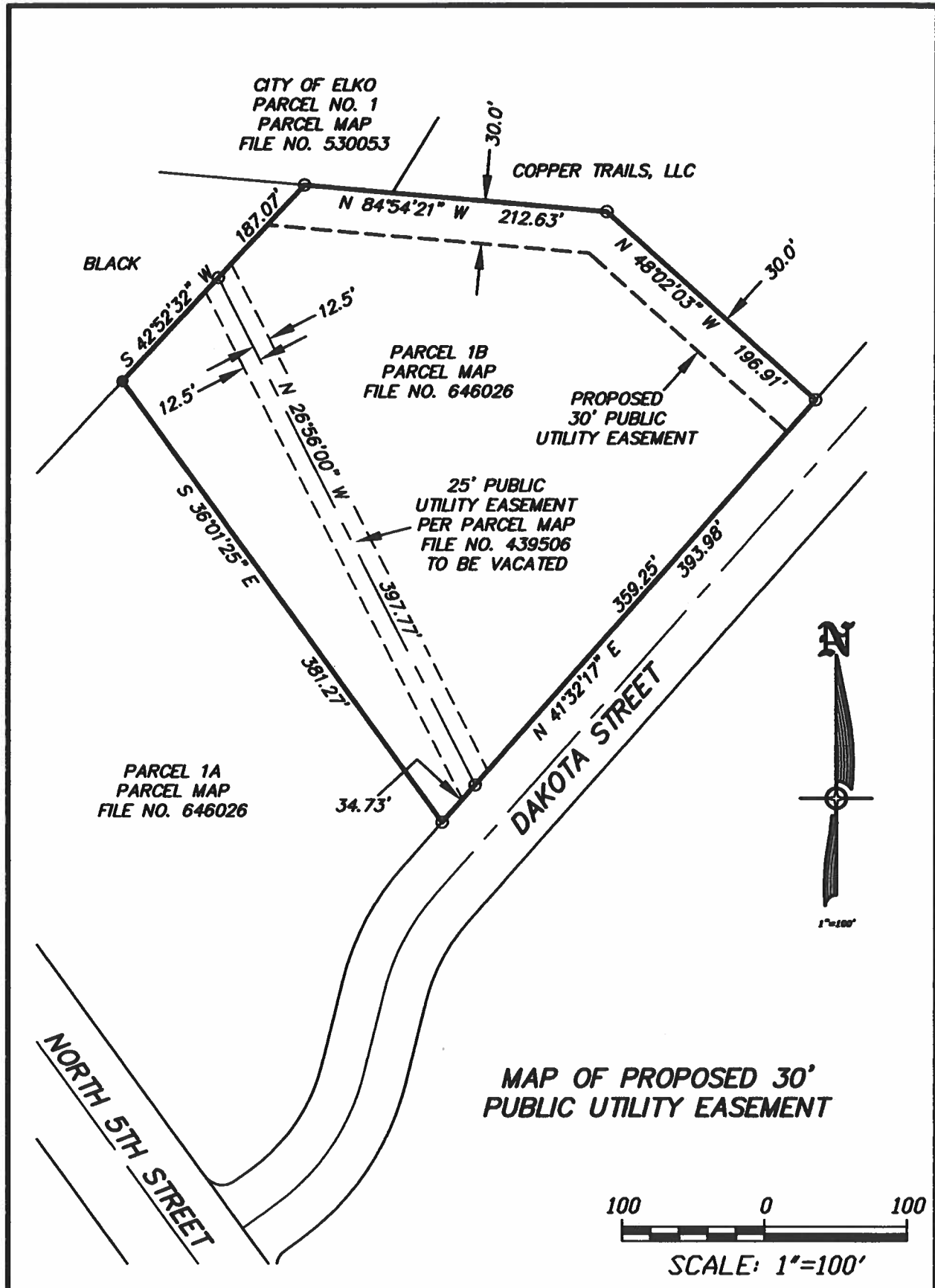
Reference is hereby made to Exhibit B, Map of 25' Public Utility Easement to be vacated, attached hereto and made a part hereof.



SEP 28 2020



SEP 28 2020



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to initiate an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8 on: 1) six parcels of land located in the area of W. Cedar Street and D Street; 2) APN 001-01R-004 located on Front Street adjacent to the 5<sup>th</sup> Street Bridge; and 3) APN 110-620-058 located at the northeast corner of Ruby Vista Drive and College Parkway, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 3, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **15 Minutes**
5. Background Information: **Recent development applications have revealed some inconsistencies between existing Zoning districts and Master Plan designations. The proposed amendment cleans up these inconsistencies.**  
  
**NRS Section 278.210(5) allows Master Plans to be amended up to four times a year. This amendment is the third in 2020.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Staff Report**
8. Recommended Motion: **Move to initiate an amendment to the City of Elko Master Plan and direct staff to bring the item back as a resolution and public hearing.**
9. Prepared By: **Michele Rambo, AICP, Development Manager**
10. Agenda Distribution: **N/A**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 11/3**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Initiation of Master Plan Amendment 3-20

Applicant(s): City of Elko

Site Location: N/A

Current Zoning: N/A Date Received: N/A Date Public Notice: N/A

COMMENT: \_\_\_\_\_

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 10/23/2020

Recommend approval

SAW

Initial

City Manager: Date: 10/23/2020

No comments/concerns

CC

Initial





**City of Elko**  
**1751 College Avenue**  
**Elko, NV 89801**  
**(775) 777-7160**  
**FAX (775) 777-7119**

## **CITY OF ELKO STAFF REPORT**

**REPORT DATE:** October 20, 2020  
**PLANNING COMMISSION DATE:** November 3, 2020  
**AGENDA ITEM NUMBER:** I.A.3.  
**APPLICATION NUMBER:** Master Plan Amendment 3-20

An initiation of an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8 on: 1) six parcels of land located in the area of W. Cedar Street and D Street; 2) APN 001-01R-004 located on Front Street adjacent to the 5<sup>th</sup> Street Bridge; and 3) APN 110-620-058 located at the northeast corner of Ruby Vista Drive and College Parkway.

### **STAFF RECOMMENDATION:**

INITIATE the proposed Master Plan Amendment and direct staff to bring the item back as a resolution and public hearing.

### **PROPOSED CHANGE #1**

#### **BACKGROUND**

A code enforcement complaint was received by the City regarding a parcel on W. Cedar Street. During the process of resolving the complaint, it was discovered that the current zoning of the property, General Commercial, is not a corresponding zoning for the existing Master Plan designation of Residential – Medium Density.

A Master Plan Amendment was determined to be needed because the Master Plan requires that the zoning of individual parcels conform with the Master Plan land use designation. As a general practice throughout Nevada, if these designations do not match, new projects cannot be approved or a condition of approval must be placed on the project that a Master Plan Amendment occur.

Once Staff began looking more closely at this area of town, it was discovered that many parcels surrounding W. Cedar Street/D Street/E Street have conflicting zoning and Master Plan designations.

#### **EXISTING CONDITIONS**

As seen on the map below, the parcels in questions are zoned General Commercial. Surrounding properties to the west and south are also zoned General Commercial while parcels to the north and east are designated as Single-Family and Multiple-Family Residential.

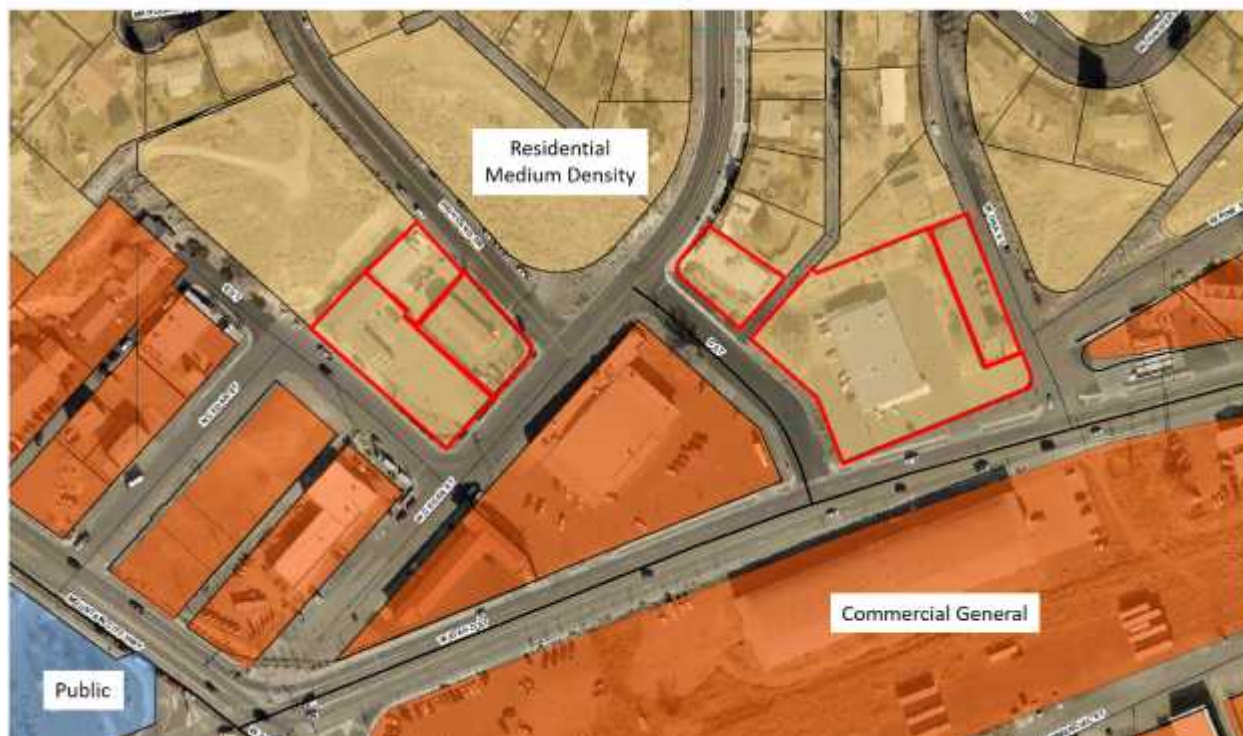
Current Zoning



There are currently a mix of uses in the neighborhood. The six parcels in question include a hotel, retail store, two professional offices, a car wash, and auto repair. The existing zoning districts make sense for this neighborhood and are not proposed to change.

The map below shows the existing Master Plan Designations for the same neighborhood. The properties surrounding the six parcels in question are designated either Commercial General or Residential Medium Density.

Current MP Designation



### PROPOSED CHANGES

In order to clean up the discrepancies between the Master Plan designations and Zoning districts of these six parcels, multiple changes are needed. These are outlined below:

APN	Use	Current Zoning	Current Master Plan	Proposed Master Plan
001-132-003	Professional Office	General Commercial	Residential Medium Density	Commercial General
001-132-006	Auto Repair	General Commercial	Residential Medium Density	Commercial General
001-132-007	Car Wash	General Commercial	Residential Medium Density	Commercial General
001-143-001	Professional Office	General Commercial	Residential Medium Density	Commercial General
001-144-002	Retail Store	General Commercial	Residential Medium Density	Commercial General
001-144-004	Hotel	General Commercial	Residential Medium Density	Commercial General

The map below shows the proposed changes to the Master Plan designation of each parcel.



## Proposed MP Designation



These changes will bring these parcels into compliance between their existing zoning districts and the proposed land use designations.

## JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

Creating consistency between zoning and Master Plan designations aides in the growth of the City by keeping the intended use of these parcels clear for future development. Inconsistencies create confusion and delay projects, which can ultimately keep somebody from building on a parcel.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The proposed change does not have a significant impact on housing or population because the parcels under consideration for this change are currently being used for commercial uses.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

No change has occurred. The amendment is warranted simply as a means to create consistency between the zoning and land use categories.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

The uses and density permitted under the new Master Plan designations does not change because the Master Plan is being changed to match the existing uses on the parcels.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

The proposed change to the Master Plan designations does not increase the need for facilities such as transportation, recreation, and utilities. With the exception of some street improvements, all facilities are already in place to serve this area.

6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

The proposed changes to each property's Master Plan designation is in substantial conformance with the following objective:

- ) Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

## **PROPOSED CHANGE #2**

### **BACKGROUND**

The City of Elko recently sold a piece of City property to Anthem Broadband of Nevada located on Front Street just west of 5<sup>th</sup> Street. During the review process of PM 7-20, which created the parcel to be sold, it was discovered that the current zoning of the property (Public/Quasi Public) and Master Plan designation (Parks and Open Space) do not allow for the proposed utility facility. An amendment to the zoning designation from Public/Quasi Public to Light Industrial is scheduled for City Council consideration on November 10, 2020.

A Master Plan Amendment is needed to create conformity between the zoning and Master Plan designations, as required by the City's Master Plan. As a general practice throughout Nevada, if these designations do not match, new projects cannot be approved or a condition of approval must be placed on the project that a Master Plan Amendment occur. A condition of approval was added to Parcel Map 7-20 requiring the proposed Master Plan Amendment, which was approved by the City Council.

## EXISTING CONDITIONS

As seen on the map below, the parcel in question is currently zoned Public/Quasi-Public, as are the surrounding properties to the west and north. The adjacent parcel to the west is zoned General Industrial and the parcel across Front Street to the south is zoned General Commercial.



There are currently a mix of uses in the neighborhood. The parcel in question is vacant, but is used as a parking area for the HARP Trail. Other surrounding uses include warehouse, RV/Mobile Home Park, and other vacant properties. The existing zoning districts make sense for this neighborhood and are not proposed to change.

The map below shows the existing Master Plan Designations for the same neighborhood. The newly created parcel is currently designated Parks and Open Space. The properties surrounding the parcel in question are designated Parks and Open Space, Industrial General, Residential Medium Density, and Mixed-Use Neighborhood.



Current MP Designation



## PROPOSED CHANGES

The map below shows the proposed change to the Master Plan designation.

Proposed MP Designation



This change will bring the parcel into compliance between its existing zoning district and the proposed land use designation.

#### JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

Creating consistency between zoning and Master Plan designations aides in the growth of the City by keeping the intended use of these parcels clear for future development. Inconsistencies create confusion and delay projects, which can ultimately keep somebody from building on a parcel.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The proposed change does not have a significant impact on housing or population because the parcel under consideration for this change is currently vacant. The parcel is not an ideal location for any new residential development because of the industrial zoning. In addition, a portion of the parcel falls within a designated FEMA flood area. The requirements to provide safe housing in this area would pose some significant hurdles to residential development on this parcel.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

No change has occurred. The amendment is warranted simply as a means to create consistency between the zoning and land use categories.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

The uses and density permitted under the new Master Plan designations does not significantly change. The proposed Industrial designation is compatible with the existing land uses and land use designations of surrounding parcels.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

The proposed change to the Master Plan designations does not increase the need for facilities such as transportation, recreation, and utilities. With the exception of some street improvements, all facilities are already in place to serve this area.



6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

The proposed change to the property's Master Plan designation is in substantial conformance with the following objective(s):

- ) Objective 7: Promote high quality and visually appealing industrial uses, where appropriate, to promote economic sustainability and strengthen the community's image.
- ) Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

### **PROPOSED CHANGE #3**

#### **BACKGROUND**

This property was recently sold and discussions have begun for development of the land. While assisting the new owner with their due diligence, it was discovered that the current Commercial Transitional zoning is not consistent with the Residential High Density Master Plan designation. In addition, a deed restriction was recorded on the property restricting the uses allowed on this parcel, specifically not allowing high-density residential. Therefore, the current Residential High Density designation violates this deed restriction.

A Master Plan Amendment was determined to be needed because the Master Plan requires that the zoning of individual parcels conform with the Master Plan land use designation. As a general practice throughout Nevada, if these designations do not match, new projects cannot be approved or a condition of approval must be placed on the project that a Master Plan Amendment occur.

Therefore, Staff determined that a Master Plan Amendment is required for consistency and compliance with the deed restriction prior to the approval of the proposed use.

#### **EXISTING CONDITIONS**

As seen on the map below, the parcel in question is zoned Commercial Transitional. The zoning on surrounding properties includes Single-Family and Multiple-Family Residential to the north, and Public/Quasi-Public on the south, west, and east. Tribal land can be found to the northeast and a small amount of General Commercial is located to the southwest across College Parkway.

### Current Zoning



The map below shows the existing Master Plan designations for the same neighborhood. The property in question is designated Residential High Density. Similar to the existing zoning designations, current Master Plan designations include Residential Medium Density to the north, Parks and Open Space to the west, and Public to the south and east. A small area of Commercial Highway is found to the southwest across College Parkway.

Current MP Designation



## PROPOSED CHANGES

The map below shows the proposed change to the Master Plan designation of the subject parcel to Commercial General.





## JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

Creating consistency between zoning and Master Plan designations aides in the growth of the City by keeping the intended use of these parcels clear for future development. Inconsistencies create confusion and delay projects, which can ultimately keep somebody from building on a parcel.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The change from Residential – High Density to Commercial General does not significantly reduce the amount of land available for residential use. The parcel has historically been considered commercial despite its current land use designation. In addition, the current zoning would only allow for high density residential, which has since been determined infeasible due to the recorded deed restriction.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

No change has occurred. The amendment is warranted simply as a means to create consistency between the zoning and land use categories.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

Overall, the proposed amendment is compatible with existing adjacent land use designations. The proposed change is needed to clean up inconsistencies with zoning and deed restrictions and does not fundamentally change the type of uses envisioned for this property. In addition, there are existing commercial properties on the opposite side of College Parkway.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

Curb, gutter, and sidewalk is already in place along both street frontages. Water mains are in place in both College Parkway and Ruby Vista Drive. When the parcel develops, any missing public improvements will be required, including the extension of sewer lines.

6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

The proposed changes to each property's Master Plan designation is in substantial conformance with the following objective:

- ) Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to set regular meeting dates as well as special meeting dates for 2020, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 3, 2020**
3. Agenda Category: **NEW BUSINESS- MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information: **The following dates are the first Tuesday of each month:  
January 5, 2021  
February 2, 2021  
March 2, 2021  
April 6, 2021  
May 4, 2021  
June 1, 2021  
July 6, 2021  
August 3, 2021  
September 7, 2021  
October 5, 2021  
November 2, 2021  
December 7, 2021**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion: **Pleasure of the Planning Commission**
9. Findings:
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 11/3**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: 2021 Planning Commission Meeting Dates  
Applicant(s): City of Edo  
Site Location: N/A  
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A  
COMMENT: This is to approve the Meeting Dates for the  
2021 Planning Commission Meetings

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 10/23/2020  
N/A

SAW

Initial

City Manager: Date: 10/23/2020  
No comments/concerns.

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Initial

# Zoning Bulletin

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## Nonconforming Use

Adjacent parcel owner challenges ZBA's decision to grant special permit to neighbors building a new garage

Citation: *Comstock v. Zoning Board of Appeals of Gloucester*, 98 Mass. App. Ct. 168, 2020 WL 4432295 (2020)

A zoning dispute arose between the owners of adjacent waterfront property in Gloucester, Massachusetts. Robert and Pamela Irwin owned a parcel that included a residence and a detached, one-car garage, which was falling down.

In 2017, the Irwins requested local zoning approval to tear down the garage and construct a new garage on the same footprint.

Walter Donovan, whose property directly abutted the Irwins, spoke in support of their project at the hearing before the zoning board of appeals (ZBA).

On May 11, 2017, the ZBA unanimously approved the project, issuing two special permits and two variances.

But, then Donovan changed his tune and filed a lawsuit challenging the ZBA's approval. The lower court granted Donovan's request for judgment without a trial. It found that the Irwins had to request a variance with respect to the height of the proposed garage. The lower court judge relied on the Appeals Court of Massachusetts' decision in *Deadrick v. Zoning Board of Appeals of Chatham* in reaching that conclusion.

Then, the matter went before the Appeals Court of Massachusetts for review.

**DECISION: Reversed; case sent back for entry of judgment in the Irwins' favor.**

No variances were needed and Donovan didn't make any claim at the hearing that the special permits the ZBA issued to the Irwins were invalid, so the Irwins were entitled to judgment without a trial.

The applicable zoning ordinance here permitted property owners to build accessory structures up to 12-feet high even where the structure did not comply with setback requirements. It also allowed them to exceed that height if they secured approval through a separate special permit process open to the owners of conforming structures and nonconforming structures alike. "Those who secure[d] approval to exceed the [12]-foot height restriction in this manner would not be creating a new nonconformity; they would be proceeding in full compliance with the provisions governing maximum building height," the court wrote



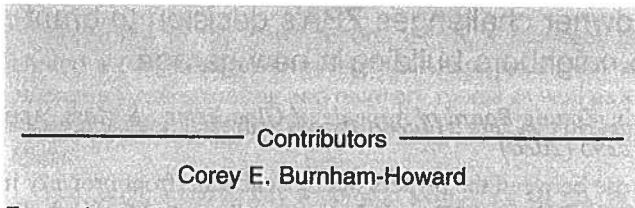


*structure did not comply with setback requirements.*

The bottom line: The Irwins did not “need not seek a variance from the height restriction here given that the ZBA ha[d] determined that they [we]re entitled to increased height under the separate special permit process devoted to that question.”

## A CLOSER LOOK

Relying on our decision in *Deadrick*, the judge concluded that because the proposed garage wouldn’t comply with the otherwise applicable 12-foot height limit, the Irwins needed to secure a variance from that limit. “A close examination of *Deadrick* reveals the flaw in that reasoning,” the appeals court wrote in this case.



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*Deadrick* involved the replacement of a preexisting nonconforming home in a coastal zoning district that had a 20-foot height restriction. “The local zoning board issued a special permit allowing the project even though it was uncontested that the new home would be more than [20] feet tall. Concluding that the new home would create an additional nonconformity (a violation of the height limit), a Land Court judge ruled that the project required a variance,” the court explained.

In that case, the court “concluded that the judge’s reasoning that a variance would be required would be correct if his premise were correct that the project would create an additional nonconformity. Key to our reasoning was that a contrary ruling would create a gross disparity between how owners of conforming structures and owners of nonconforming structures would be treated: an owner of an existing conforming structure could not build an addition that created a dimensional nonconformity without a variance, while an owner of preexisting nonconforming structure could do so based merely on a finding that the change would not cause substantial detriment to the neighborhood.”

But, the court also pointed out in *Deadrick* “local zoning board had not addressed whether the proposed home would be entitled to an exemption from the height restriction. . . . If the proposal were entitled to such treatment, then the premise of the judge’s ruling—that the proposal would introduce an additional nonconformity—would be in error. We therefore vacated the judgment and remanded the case for a determination whether the new home in fact would be bound by the height limit, or could win an exemption from it (in which case no variance would be required).”

In the end, the court found the reasoning in *Deadrick* supported the Irwin’s argument not Donovan’s contention.

*The case cited is Deadrick v. Zoning Bd. of Appeals of Chatham, 85 Mass. App. Ct. 539, 11 N.E.3d 647 (2014).*

## Variance

**Owner of adjacent lot challenges NJSEA’s decision to grant use variance to other parcel owner to construct a warehouse**

Citation: *Matter of a Use Variance Application Submitted as Part of File No. 17-239 Mept Lincoln Crossing LLC/ Lincoln Gateway - New Bldg/Variance Block 451.01, Lot 14.011, 2020 WL 4462069 (N.J. Super. Ct. App. Div. 2020)*

MEPT Lincoln Crossing, LLC (MEPT) owned a 19.9-acre parcel (the property) in the Hackensack Meadowslands District (the district), a 30.4-square-mile area in Bergen and Hudson Counties, New Jersey. The district’s Regional Commerce Zone was zoned for commercial purposes, not including warehouses.

The property had been improved with a 236,207-square-foot building most recently used by the now-defunct clothing retailer Daffy’s as a warehouse/distribution facility,

corporate headquarters, and accessory retail outlet, which MEPT proposed to replace since the property stood vacant since 2012.

Towers Associates Ltd. (Towers) owned two adjacent lots. One of those lots was developed with a Home Depot; the other was undeveloped. A Towers' owner testified during a public hearing that Tower intended to develop the vacant parcel with a hotel, although no application for such development had been submitted to NJSEA.

### THE ROADWAY

Daffy's Way, a private road, traversed sections of the property and Towers' parcels of land. This was governed by a reciprocal easement agreement (REA) that Towers and MEPT's predecessor in title had executed many years ago. In the REA, each party granted to the other mutual and reciprocal easements for "vehicle and pedestrian ingress, egress and passage and re-passage over" the portions of the parcels on which the roadway was situated.

In 2015, MEPT filed a land use application with NJSEA for a use variance to construct a warehouse on the property. On February 23, 2016, MEPT withdrew its 2015 application without prejudice.

In June 2017, MEPT filed another land use application with NJSEA seeking a use variance for the construction of a warehouse and distribution facility on the property. The 2017 application, which Towers opposed, differed in significant ways from the MEPT's 2015 application. For instance, it proposed a substantial reduction to the proposed warehouse's size and sought to relocate the facility's loading docks and parking and change the site circulation.

NJSEA staff recommended approving MEPT's application, subject to several conditions. Towers then appealed the staff's decision to the NJSEA. It sought a hearing with the Office of Administrative Law (OAL), to which MEPT objected.

The NJSEA denied Towers' request and found that it didn't have a sufficient interest to demonstrate standing to demand a hearing. Then, the NJSEA adopted its staff's recommendation and granted MEPT's requested use variance subject to several conditions, i.e.:

- providing an air quality plan for review that included air quality monitoring provisions for a minimum of one year from completion of the building;
- submitting an as-built noise evaluation within 60 days of completion of the building in order to show compliance with applicable state law;
- revising the site plan to eliminate seven trailer parking spaces, relocate the proposed guard booth, and include a sign prohibiting tractor-trailers from utilizing the drive aisle through the parking lot; and
- devising a plan to reconfigure the Daffy's Way driveway for enhanced two-way traffic flow to reduce the potential for conflicting movements between vehicles travelling in opposite directions.

Towers appealed.

**DECISION: Affirmed.**

There was ample evidence to support the NJSEA's issuance of a use variance to MEPT.

Towers had three central arguments on appeal:

- 1) it had a clear legal right to appeal because it had a "particularized property right" that was directly and negatively impacted by the NJSEA's decision to grant MEPT the use variance;
- 2) NJSEA erred in granting MEPT's use variance request because the application hadn't met the preconditions for approval; and
- 3) its due process rights had been violated because NJSEA hadn't let it introduce evidence during the hearing on the matter.

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*The court deferred to the NJSEA since "the record fully support[ed] its decision."*

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The court noted that it was affirming the NJSEA's determination for the reasons it had provided in its "extensive and detailed written decision." That decision included many preconditions MEPT would need to meet and took into account Towers' objections.

The bottom line: The court deferred to the NJSEA since "the record fully support[ed] its decision." There was a "strong presumption of reasonableness attache[d] to the actions of the administrative agencies," the court explained. And, the scope of its review was limited to determining whether the NJSEA had acted in an "arbitrary, capricious, or unreasonable" manner or where its decision wasn't "supported by substantial credible evidence in the record as a whole."

The court considered:

- whether the NJSEA's action violated "express or implied legislative policies, that is, did the agency follow the law";
- "whether the record contain[ed] substantial evidence to support the findings on which the agency based its action"; and
- "whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors."

While the court wasn't bound by the agency's interpretation of a law, "substantial deference" was afforded to the agency responsible for enforcing a particular law.

The bottom line: The record supported the NJSEA's decision that "Towers' expressed interest in the impact of increased traffic on Daffy's Way on its tenant's business [wa]s a generalized property right not of the type creating a right to an administrative hearing on MEPT's variance application." "The same is true for NJSEA's conclusion that Towers' argument the Variance Resolution will adversely affect the future development of its vacant parcel is speculative and, thus, legally insufficient to create a right to a hearing," the court found.

Further, while Towers had a property interest in the REA, “that interest [wa]s not directly affected by the Variance Resolution” since the variance didn’t “enable MEPT to violate its obligations under the REA and . . . Towers [would] still entitled to initiate an action under the REA to enforce such obligations.”

The court also noted that should Towers believe its rights have been infringed upon by MEPT’s proposed use of its property—that is by realigning a portion of Daffy’s Way or by making other improvements to the roadway that violated the REA, it could “pursue available remedies under the agreement.”

“The NJSEA variance approval process [wa]s not the appropriate forum for resolution of any disputes MEPT and Towers may have with respect to the scope of their rights under the REA,” the court added.

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*Case Note:*

*The court explained its decision shall not be used as binding precedent on any other court. The opinion was only binding on the parties involved in this matter. It also noted that concerning Towers’ due process argument that it “lack[ed] sufficient merit to warrant discussion in a written opinion.”*

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## Zoning Violation

Couple leases three bedrooms to developmentally disabled women, but were they unlawfully operating a ‘small group home’?

Citation: *Bianco v. Youngstown*, 2020-Ohio-3584, 2020 WL 3604276 (Ohio Ct. App. 7th Dist. Mahoning County 2020)

Stephen and Tracey Bianco owned a three-bedroom, single family home on Youngstown, Ohio’s Ridgelawn Avenue. This was situated in an “RS-12 Single Family Residential Zoning District.”

In 2017, the Biancos leased rooms in that home to three developmentally disabled women and/or their guardians, all whom were contracted with Gateways to Better Living (Gateway), which provided the women with housekeeping, social supervision, transportation, and other assistance. Each of the women had their own bedroom and shared the common areas.

In October 2017, the Biancos received a “Notice of Violation-Use not Permitted” for “operating a Small Group Home in a single family zoning district.” The violation notice listed the Ridgelawn property and stated that it was located in an “RS-12 Single Family Residential Zoning District.”

The Biancos appealed to the Youngstown Board of Zoning Appeals (BZA). The BZA held a public hearing on the appeal and heard from Gateways’ program director, several concerned neighbors, and a city councilman.

The BZA voted 5-0 to deny the Biancos’ appeal. Then, they appealed to the lower court, which determined that the BZA’s finding that they had been operating a small, group home in a single-family zoning district was supported by competent, credible evidence. It also found that the BZA’s decision was not unlawful, unreasonable, or against the weight of the evidence.

The Biancos appealed to the Court of Appeal of Ohio.

**DECISION: Reversed; City of Youngtown zoning specialist to issue violation vacated.**

“The lower court’s judgment was contrary to law on the point that [the Biancos] [we]re not true ‘operators’ of a small group home within the definition provided by the City in the Youngstown Redevelopment Code,” the appeals court found.

### A CLOSER LOOK

The lower court had reviewed the transcript, which stated that the three women had previously lived at a large group home that Gateways operated. They wanted to be placed at a smaller residence, and Gateways located and visited with the Biancos’ property before the women entered in leases with the Biancos.

While the women lived at the residence, “Gateways continued to provide personal services to the women including, but not limited to, 24-hour supervision, assisting with shopping, bathing, preparing meals, doing laundry, and transportation to medical appointments.” Also, a Gateways’ representative testified that the Biancos’ house wasn’t a group home that Gateway was operating; rather it was a private home within which the women each rented space. The women were free to leave as they wished, and Gateways was available upon their request to assist them with various tasks.

The City of Youngstown cited the Biancos for a “Use not Permitted for ‘operating a Small Group Home in a single family zoning district.’” “Both the BZA and the trial court failed to consider what this violation actually means,” the appeals court concluded.

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*“Both the BZA and the trial court failed to consider what this violation actually means,” the appeals court concluded.*

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According to the city’s redevelopment code, “In the context of group homes, ‘operator’ means any person who manages, controls or otherwise performs the day-to-day tasks of operating a group home, regardless of whether such person is the license holder.”

Here, there wasn’t any evidence—or even an allegation—that the Biancos “who only collect[ed] rent and provide[d] a residence, ‘operate[d]’ a group home,” the court ruled.

Since the appeals court review was limited to whether the lower court erred in finding the BZA’s decision wasn’t “unconstitutional, illegal, arbitrary, capricious, unreason-

able, or unsupported by the preponderance of substantial, reliable, and probative evidence,” the court would not “weigh [any] conflicting evidence regarding whether the women [we]re living in a ‘small group home’ or whether they [we]re to be considered a ‘single family unit.’”

### PRACTICALLY SPEAKING

The Biancos didn’t “manage, control, or perform the day-to-day tasks of operating a group home”; they merely leased rooms within the home to the three women. Because the Biancos were not operating a small group home in a single-family district, the city couldn’t cite them for operating such.

#### Case Note:

*“If anyone is operating a group home at the Ridgelawn residence, it would be Gateways and not [the Biancos],” the appeals court wrote.*

## Agrotourism

### Couple questions whether adjacent parcel of farmland may be used for ATV park

Citation: *Clement v. Cumberland County*, 836 S.E.2d 789 (N.C. Ct. App. 2020)

McCormick Farms owned real property in Cumberland County, North Carolina. Brian and Beatrice Clement owned real property adjacent to McCormick Farms.

Deep Creek ATV Park LLC (Deep Creek) leased certain portions of the McCormick Farms property for use as a recreational all-terrain vehicle park (ATV park).

On April 16, 2018, the Clements emailed Thomas Lloyd, the director for the Cumberland County planning and inspections department, requesting administrative guidance as to whether the ATV park qualified as an agritourism activity under the *bona fide* farm purposes exemption from county zoning authority pursuant to North Carolina law.

Their email to Lloyd was titled “ATV Park Zoning Question.” Lloyd responded, “This land has been, and still is, in the present use program, is actively engaged in Silviculture and has a farm number. It is a Bona Fide Farm operation. . . . As the person tasked with making the determination, and in light of the vagueness of the statute, I have determined that it does fall into the category of Agritourism. The County Attorney agrees and has advised me on the matter. In the future, I would request that you contact County Attorney Rick Morefield [*sic*] . . . with further questions.”

The Clements didn’t seem to have any more questions and they didn’t reach out to the county attorney.

Then, on June 12, 2018, the Clements again contacted Lloyd requesting administrative guidance as to whether the ATV park qualified as an agritourism activity under the

exemption, this time in light of a 2018 court ruling in *Jeffries v. County of Harnett*.

The following day, the county attorney responded to the Clements’ question. His response stated that Lloyd would not provide an official determination.

In July 2018, the Clements filed a request for “writ of mandamus.” They wanted to compel the county to provide a written determination as to whether the ATV park qualified as an agritourism activity under the *bona fide* farm purposes exemption from county zoning authority pursuant to section 153A-340 of the applicable state law.

The county filed a request to dismiss their action. McCormick Farms and Deep Creek also filed dismissal requests.

The lower court conducted a hearing on the requests for dismissal on the substantive issues regarding the writ of mandamus the Clements requested. The court then denied the requests for dismissal and issued a writ of mandamus compelling Cumberland County to provide a written zoning determination on December 19, 2018.

On December 21, 2018, the county requested a stay pending appeal, which was granted.

Before the appeals court, the county, McCormick Farms, and Deep Creek argued the lower court didn’t have subject matter jurisdiction to rule on the Clements’ request for a writ of mandamus.

#### DECISION: Reversed.

The lower court didn’t have subject matter jurisdiction over the Clements’ request.

To exercise its authority over a case or controversy, a trial court needed to have “subject matter jurisdiction” (SMJ). If it lacked SMJ, the action had to be dismissed.

When reviewing the issue of whether a trial court had SMJ over a matter, the appeals court could review the action “*de novo* and . . . consider matters outside the pleadings.”

A specific section of the Cumberland County Zoning Ordinance (the ordinance) gave the Cumberland County planning and inspections director authority to “administer and enforce the [o]rdinance.” “When a party seeks an official decision, the Director must provide that party with written notice of his final decision,” the ordinance stated. Also, “This written notice may be delivered by personal delivery, first-class mail, or electronic mail,” the ordinance added.

Under state law, counties could “establish a board of adjustment to ‘hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning . . . ordinance.’” Cumberland County had adopted this scheme in its ordinance. Thus, “any party with standing may appeal a decision of the [d]irector to the quasi-judicial Cumberland County Board of Adjustment.” And, “[s]uch appeal must be filed with the Board of Adjustment within thirty days of receiving written notice of the Director’s official decision. . . . A party may appeal the final decision of the Board of Adjustment to the Superior Court.”

But, the court explained, a writ of mandamus might be

properly issued if the petitioning party didn't have any other legal remedy available—"such an occasion may arise where an administrative official fails to issue an official decision in response to a zoning inquiry," it noted. Also, "[w]here no official decision ha[d] been issued, a mandamus proceeding m[ight] be necessary because the party seeking the determination ha[d] no right to appeal to the Board of Adjustment."

Also, the court explained, in a previously decided case it had ruled that "a response to a zoning inquiry constitute[d] an appealable, official decision when":

- "the response provide[d] a determination made by an official with the authority to issue definitive interpretations of the zoning ordinance";
- "the response concerns the manner in which a provision of the zoning ordinance should be applied";
- "the response concern[ed] a specific set of facts"; and
- "the response [wa]s provided to a party with a clear interest in the outcome of a specific dispute."

"Therefore, where a response to a zoning inquiry meets these requirements, a party must exhaust their administrative remedies by appealing to the Board of Adjustment prior to seeking review in the Superior Court," the court noted, citing the applicable zoning ordinance.

The bottom line: Lloyd's response to the Clements' April 16, 2018 zoning inquiry "constituted an appealable, official decision," the court found. "As the Cumberland County Planning and Inspections Director, Lloyd had the authority to issue a definitive interpretation of the Ordinance. In fact, Lloyd's response even acknowledges that he is tasked with making the determination. Second, Lloyd's response concerns the specific application of county zoning regulations in light of the *bona fide* farm purposes exemption." Also, "the response concern[ed] a specific set of facts," that is how section 153A-340 applied to an ATV park located on a property entitled to the *bona fide* farm purposes exemption. And, "the response was provided to [the Clements] who, as owners of property adjacent to the ATV Park, had a clear interest in the outcome of the dispute."

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*Lloyd's response to the Clements' April 16, 2018 zoning inquiry "constituted an appealable, official decision," the court found.*

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While the Clements contended Lloyd's response was "vague and ambiguous" and "did not state, with any degree of certainty, whether or not the ATV park use proposed for the site was or was not agritourism," the court wasn't persuaded. "As the person tasked with making the determination, . . . I have determined that it does fall into the category of Agritourism," Lloyd wrote. His "response plainly addressed [their] inquiry concerning the zoning question about the ATV [p]ark."

Finally, the Clements argument that Lloyd had provided a response that was too vague and ambiguous to qualify as

an appealable decision "was further undermined by the lack of any indication in the record that [they] sought clarification of this initial decision." They didn't make any "attempt to revisit the matter until June 12, 2018, after this [c]ourt [had] issued an opinion that [they] viewed as favorable to their argument that the ATV [p]ark should not qualify for the *bona fide* farm purposes exemption."

Since Lloyd's response to the April 16, 2018 zoning inquiry constituted an appealable, official decision, the Clements were bound under the ordinance to "file their appeal with the Board of Adjustment within thirty days of receiving written notice of that decision. By failing to file an appeal with the Board of Adjustment, [they had] not exhaust[ed] their administrative remedies." As such, the Clements couldn't "subsequently create jurisdiction with the Superior Court 'by couching [their] claim in the guise of a mandamus proceeding.'"

## PRACTICALLY SPEAKING

In North Carolina, "[a]s a general rule, where the legislature ha[d] provided by statute an effective administrative remedy, that remedy [wa]s exclusive and its relief must be exhausted before recourse may be had to the courts." Requiring parties to exhaust their administrative remedies, the courts "promote[d] certainty in the marketplace and prevent[ed] economic waste by giving effect to the speedy, binding determinations of those officials and quasi-judicial bodies best equipped to carry out the administrative functions of the State."

*The cases cited are Jeffries v. County of Harnett, 259 N.C. App. 473, 817 S.E.2d 36 (2018), review denied, 372 N.C. 297, 826 S.E.2d 710 (2019); and Meier v. City of Charlotte, 206 N.C. App. 471, 698 S.E.2d 704 (2010).*

## Zoning News from Around the Nation

### California

**Court expected to formalize ruling on short-term rental ban in Manhattan Beach**

As of print time, the Los Angeles Superior Court was anticipated to formalize its ruling from earlier in 2020 voiding Manhattan Beach's short-term rental ban, the *Daily Breeze* reported recently.

The city sought to restrict short-term rentals in residential parts of its coastal zone, but according to the court, that restriction overreached, in violation of the California Coastal Act (CCA).

While the city bars rentals under 30 days in length, the court found this limitation doesn't correspond to the CCA's goal of protecting shoreline access for everyone—this includes overnight access, the court reasoned. Also, the California Coastal Commission (CCC) had not approved the city's ban, and the CCC had superseding authority over municipalities concerning coastal zones.

If the city chooses not to rescind the short-term rental ban, it may opt to submit a coastal zone-specific ordinance

to the California Coastal Commission for consideration, the news outlet reported.

Source: [dailybreeze.com](http://dailybreeze.com)

### Georgia

Residents in St. Simons Island's Pier Village area question rezoning request to accommodate a new museum

Residents in the Pier Village area of St. Simons Island, Georgia are wondering why there's a push to rezone an area to permit the building a new museum to showcase art of the American West and other historic pieces of artwork owned by billionaire businessman and philanthropist Philip Anschutz since the area's zoning would already permit that use, *The Brunswick News* reported recently.

The proposed two-story, 20,000 square-foot museum would be constructed in the Greek revival style, the news outlet reported., with architect Charles Cluskey responsible for its design.

When an application to rezone the block from village mixed use, which permits art galleries, to planned development, some locals became skeptical about the builder's motives. That's got them concerned about what other concessions the zoning permit applicant may seek, a former Island Planning Commission member told the news outlet.

The bottom line: The concern is that by designating the block for planned development within Glynn County, the builder may have the opportunity to constrict something the residents don't want there, since each planned development rezoning initiative typically operates by its own set of rules—that's what one senior associate at TSW, which according to TSW's website designs spaces "that embody the principles of livable communities, walkability, sense of place, public spaces, human-scaled buildings, and connectivity," told the news outlet.

For more information on Envision Glynn, including zoning updates, visit [glynncounty.org/1985/Envision-Glynn-Zoning-Update](http://glynncounty.org/1985/Envision-Glynn-Zoning-Update).

In other news out of Georgia, Bartow County officials are looking to add textual amendments to the local zoning code to create greater requirements for outdoor firing ranges, *The Daily Tribune News* reported recently.

As of print time there were two proposed amendments set for the county planning commission's review. Both would report current and proposed firing ranges to limit services to members only. Also, facilities would only be permitted to allow 50 members in such facilities, the news outlet reported.

Calling this a public-safety move, Bartow County's zoning administrator told the news outlet that the amendments are merely "tweaks" to the existing code designed reduce the potential adverse impact on neighborhoods and properties located close to firing ranges.

Currently indoor and outdoor firing ranges are permitted in Bartow County's A-1 agriculture districts provided a conditional use permit has been approved by the commissioner, the news outlet noted. But, these proposed amend-

ments would not apply to indoor firing range facilities, the zoning administrator stated.

For more information on Bartow County's zoning code, visit [library.municode.com/ga/bartow\\_county/codes/code\\_of\\_ordinances?nodeId=APXAZO](http://library.municode.com/ga/bartow_county/codes/code_of_ordinances?nodeId=APXAZO).

Sources: [thebrunswicknews.com](http://thebrunswicknews.com); [daily-tribune.com](http://daily-tribune.com)

### Illinois

Pot shop in Naperville might be built within 250 feet of homes given local zoning board's recommendation

The Naperville Planning and Zoning Commission (PZC) has recommended that a recreational marijuana shop may be built in a section of the city that's just 250 feet from a residential neighborhood, the *Naperville Sun* reported recently. With a 7-2 vote, the PZC green lighted the basic requirements city staff had recommended for the facility, including a limit of three stories high and six parking spaces for every 1,000 square feet of marijuana shop space if there's shared parking or seven-and-a-half spaces if shared parking doesn't exist, the news outlet reported.

The PZC also recommended that shop hours be limited to between the hours of 9:00 a.m. and 7:00 p.m. and that the proposed shop should have to submit a traffic control plan for review.

According to the news report, the advisory panel had three options to consider concerning the shop's distance from residential properties: a limit of 1,000 feet, 250 feet, or no limit.

As of print time, the recommendation was set to be reviewed by the city council. This would include an opportunity for concerned residents to voice their opinions on the PZC's recommendation.

Source: [chicagotribune.com](http://chicagotribune.com)

### Michigan

Appeals court sides with township concerning dispute over booster station

The Michigan Court of Appeals has ruled in favor of Osceola Township in its dispute with Nestle Waters North America (Nestle) over its proposal to erect a booster station there, the *Cadillac News* reported recently. The station would have permitted the company to pump and transport a higher volume of water, which the township contended wasn't permitted under the zoning ordinance.

The court's ruling came after a lengthy appellate court battle that began in 2017 when the circuit court ruled that the water was essential to Nestle's bottling operation, which supplied public demand and rendered Nestle's boosting station an essential service. In 2018, the state appeals court agreed to hear the case, and in August 2020 it delivered its ruling.

The appeals court found the lower court's decision to be "clearly erroneous," the news outlet reported. While water was essential to human life, bottled water was not, it concluded. An exception could apply where no water source was available, but that wasn't the case here.

According to a statement Nestle issued following the ruling, it was considering its legal options—e.g., whether to further appeal.

Source: [cadillacnews.com](http://cadillacnews.com)

### Pennsylvania

UPMC's hopes of building a new facility near existing Allegheny Health Network hospital dashed for now

A county court has ruled that UPMC cannot proceed with plans to construct a new facility about a mile away from its Allegheny Health Network hospital in Jefferson Hills, *Triblive.com* reported recently.

The Allegheny County Court of Common Pleas dismissed UPMC affiliate AUUE Inc.'s appeal of a Jefferson Hills, Pennsylvania Zoning Hearing Board's decision to revoke a zoning permit that would have green-lighted the proposed structure along Route 51, the news outlet reported.

Controversy arose after residents challenged the initial zoning permit approval, it added. Those residents and their lawyers asserted that the zoning ordinance's plain language did not permit the construction of a hospital.

According to the news report, UPMC's proposal included a 63-bed, four-story hospital, equipped with an emergency and operating and recovery rooms as well as an imaging center, a women's health facility, and 700 parking spaces.

The judge's ruling came about a year after UPMC appealed on the grounds that the ZHB's decision to revoke its permit was arbitrary and capricious. And, the judge explained that the ZHB's decision was entitled to substantial deference and that given the ordinance's intent, having another competing hospital in the same zoning district isn't possible.

*Triblive.com* reported that UPMC had not yet commented on whether it will appeal the judge's ruling to the Commonwealth Court of Pennsylvania.

In other news out of Pennsylvania, residents in Bethlehem may not see a proposed plan for a new grocery store come to fruition, *Lehigh Valley Live* reported recently.

That's because the Bethlehem Planning Commission has unanimously voted for the Bethlehem City Council not to accept a zoning text amendment proposal that would make a grocery store a permitted use within the municipality's institutional zoning district, the news outlet reported.

Real estate developer Abe Atiyeh, doing business as Bethlehem Manor Village LLC, owns a parcel of land at the intersection of Center Street and Dewberry Avenue. Atiyeh, who previously had a desire to build an assisted living facility at the site, as well as a psychiatric hospital, a drug treatment center, and a 100-plus unit apartment complex, requested the zoning amendment after the German supermarket chain Lidi inquired about building a new store on the five-acre lot, the news outlet reported.

Currently, the city's institutional zoning district permits education, medical, and health facilities, as well as parks. The requested amendment, which the Bethlehem Department of Community and Economic Development wasn't keen on, would mean retail providers could move into the district, the news outlet reported.

The news outlet also reported that Atiyeh has appealed the judge's ruling.

For more on the city's institutional overlay district, visit [ecode360.com/13374258](http://ecode360.com/13374258).

Sources: [triblive.com](http://triblive.com); [lehighvalleylive.com](http://lehighvalleylive.com)



# Zoning Bulletin

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## Permitted Use

Golf village challenges city's denial of application to construct residential hotel

Citation: *Golf Village North LLC v. City of Powell, Ohio*, 2020 WL 5049364 (6th Cir. 2020)

*The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.*

Golf Village North LLC (GVN), a land developer, was in a dispute with the City of Powell, Ohio over a plan to build a hotel on vacant land. GVN asserted that the applicable zoning ordinances permitted the use; Powell, conversely, contended they didn't.

GVN's efforts in the administrative and court systems failed because it hadn't filed an application for a zoning certificate. Also, Powell refused to issue an official land-use determination without that certificate, so GVN filed suit against Powell, claiming it had violated its due process rights.

The lower court granted judgment without a trial to Powell. It found that GVN could not establish a constitutionally protected property interest in developing its land for use as a hotel. The court explained that the applicable development plan limited the land use through implication; that is, it didn't include any reference to a hotel, so that use was assumed not to be permitted. Further, the court ruled there were two provisions in the plan it interpreted as prohibiting such use.

GVN appealed.

**DECISION: Reversed; case sent back for further proceedings.**

The text and structure of the development plan didn't support the lower court's "by implication" construction limitation, the Sixth U.S. Circuit Court of Appeals ruled.

Further, the appeals court found the "purported limitations" were not interpreted "as prohibiting use of the land as a hotel."

## A CLOSER LOOK

Triangle Properties Inc (TPI) and GVN, its subsidiary, envisioned a "planned, comprehensive development" called "Golf Village Community" with "a full complement of residential, commercial, office, and light industrial uses." This community would include residential dwellings, a golf course, a "commercial retail center," and offices.

GVN's proposed residential hotel was to be built on two parcels that comprised 8.1 acres within "Subarea G" of the Golf Village Community. And, TPI submitted a development plan, which described Subarea G as a "community scale office park." It also included a design firm's "Concept Plan," which showed a map of Subarea G





and describing various parcels of land as “Retail,” “Retail/Office,” or “Office/Retail.”

*“We conclude that a residential hotel is a permitted use of the Property pursuant to the Development Plan and the [applicable] Township Zoning Resolution, and that [GVN] has a constitutionally protected property interest to such use of the Property,” the court ruled.*

In 2002, TGI submitted an application to amend the development plan. It requested “that the sub areas E and G of Golf Village be modified from Planned Office to Planned

Office and Commercial to allow for a mixture of these types of uses.” This wasn’t however, “a request to rezone the land,” the court explained—prior to TGI’s amendment and after it, “the land remained zoned ‘PC’ (‘Planned Commercial and Office District’).”

### THE COURT’S REASONING IN REVERSING THE LOWER COURT’S DECISION

“We conclude that a residential hotel is a permitted use of the Property pursuant to the Development Plan and the [applicable] Township Zoning Resolution, and that [GVN] has a constitutionally protected property interest to such use of the Property,” the court ruled. The court explained that a “Pre-Annexation Agreement” entitled GVN to judgment as a matter of law concerning the first element of its due process claims.

### THE BOTTOM LINE

GVN sought a declaration that the proposed development to build a residential hotel was a permitted use of the property. “The district court dispensed with this claim in short order, ‘ha[ving] already concluded that there [wa]s no dispute of material fact that, under the Agreements and Development Plan executed by the parties, [GVN did] not have a property interest in the use of its land as a residential hotel,’ ” the court noted.

GVN claimed Powell violated its substantive due process rights by refusing “to issue a determination in this case” or “acknowledge the hotel is a permitted use.” The lower court declined to consider this argument; the court noted. In the end, GVN’s “narrow request [wa]s consistent with the conclusion that it d[id] have property interest in developing the Property as a residential hotel,” so the lower court’s decision to grant Powell judgment without a trial was reversed.

#### Case Note:

*A development plan, which must be included with a zoning application, limits the uses of land separately, and on a more granular level. The Zoning Resolution provides that the permissible uses for PC-zoned land must be ‘developed in compliance with the approved Development Plan and standards,’ ” the court explained.*

## Zoning Violations

### Legal dispute arises after permitting issue goes awry

Citation: *McGuire v. Carey*, 2020 WL 5042989 (D. Nev. 2020)

Carey Trust, through its trustee Anne Marie Carey (collectively, Carey), bought a property located at 1640 Watt St., Reno, Nevada 89509 in 2007. At the time of this sale, the property was listed as having four bedrooms on the Northern Nevada Regional Multiple Listings Service (MLS), and the Washoe County Assessor’s Office taxed it as a four-bedroom home.

In 2010, Carey sought to make improvements to the prop-

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erty and initially started work without a permit. Then, Carey applied for permits with the city, which was issued and listed the general contractor as “All Quality Builder (AQB).”

Carey became dissatisfied with AQB and applied for a new permit—Carey intended to complete the work herself without a general contractor. “Anne Marie Carey” was listed as the “Owner” and “Owner Builder” as the “General Contractor.”

The city approved the permit to make property modifications in February 2011. Then, in 2019, the city listed the permit as “Active/Permit Issued,” but other permits relevant to the property had been listed as “Expired,” “Cancelled,” or “Closed.”

The website also noted that the plans for the permit were “Approved w/ Redlines” on February 17 or 22, 2011. And, next to “Approved w/ Redlines,” there was a note stating, “This residence is restricted to 2 bedrooms based on the available parking on this site. Builder and owners are aware of this restriction.”

In 2019, Carey listed the property for sale as a four- or five-bedroom home. A buyer expressed interest in purchasing the property and made an offer.

While the transaction was in escrow, the buyer’s real estate agent pulled the permit history and discovered one permit was “Active/Permit Issued.” Following that, the city received a citizens complaint about the property.

On April 19, 2019 Carey received a notice of violation from the city, which stated the permit would expire two weeks after that date because she had failed to comply with inspection requirements and for other defects. The city’s letter identified “the last inspection being a sheetrock inspection on March 17, 2011,” and violation of zoning restrictions as “MLS listings show the house is selling as a 5 bedroom, the approved building permit for this addition restricted the total number of bedrooms for the house to 2 bedrooms” as the deficiencies.

Carey contended she wasn’t aware of any of the alleged defects until she received this letter. But, the city asserted she was in violation of Reno Municipal Code (RMC) nonetheless.

## THE LAWSUIT

The issue central to this case was whether to grant a preliminary injunction to prevent the city from enforcing administrative penalties in response to the alleged zoning ordinance violations.

The court held a hearing and granted a temporary restraining order (TRO) until August 17, 2020 to allow for examination of the matter. At this later hearing, the city stipulated not to pursue any enforcement actions, except to record a notice of these violations.

**DECISION: Request for preliminary injunction denied.**

Since the city stipulated not to pursue any enforcement actions, the granting of a preliminary injunction wasn’t necessary.

There were four factors a court would generally consider to determine if a preliminary injunction should be granted:

- 1) could the requesting party could demonstrate the likelihood of success on the merits;
- 2) could the party demonstrate s/he was likely suffer irreparable harm in the absence of preliminary relief;
- 3) did the “balance of equities” tip in the party’s favor; and
- 4) was the granting of the preliminary injunction in the public’s interest.

“With the [c]ity’s concession that it will not pursue any action beyond recording the Notice of Violation, the [c]ourt finds that [the requesting party] cannot satisfy the required showing that they will be irreparably harmed absent the proposed injunction, that the balance of hardships tips in their favor, and that such an injunction is in the public interest,” the court wrote. “Based on these failures, the [c]ourt denies the motion.”

## A CLOSER LOOK

The requesting party would still “have a duty to disclose the alleged ordinance violations to any potential buyers even if they sold it ‘as is.’ ” Therefore, the notice didn’t do anything “but alert potential buyers of the [p]roperty that the [c]ity contend[ed] it to be in violation of the zoning ordinances—a contention that [the requesting party] free to challenge in this forum but must still disclose to any potential buyers.”

The court also noted that the city had “a recognizable interest in protecting the public from purchasing a property burdened by an alleged zoning ordinance violation without notice.” And, granting the injunction wouldn’t be in the public’s interest: All it would do is “alert potential buyers to an alleged issue with the [p]roperty. Preventing further future harms is in the public interest,” it wrote.

## Land Use

**Landowner challenges township’s ordinance that restricted number of single-family homes on its parcel**

Citation: *Merck Sharp & Dohme Corp. v. Township of Branchburg*, 2020 WL 4745271 (N.J. Super. Ct. App. Div. 2020)

Property owned by Merck Sharp & Dohme Corp. (Merck) consisted of about 206 acres in the central part of the Township of Branchburg, New Jersey. Single-family residential developments abutted the parcel, and Merck’s land was the last remaining large, undeveloped area in the vicinity.

The Merck property was assessed as farmland for tax purposes, and much of it was farmed. The State Development and Redevelopment Plan (the State Plan) designated it as within Planning Area 2 (SPA2), which was intended to accommodate much of New Jersey’s future growth due to access to infrastructure supporting development.

A 2006 master plan reexamination report stated that the goal of preserving Branchburg’s rural character had become “increasingly difficult.” The report concluded that a three-

acre agricultural zone was no longer sufficient to maintain the rural ambiance of the town.

Therefore, the authors of the master plan recommended the creation of a new district to combine agricultural and other open lands along the riverfront corridor into a “continuous low intensity/conservation zone throughout” Branchburg. They also contended there was a need to retain “large contiguous masses of farmland and other undeveloped lands” and recommended a six-acre minimum lot size, with a residential clustering component.

In July 2008, Branchburg adopted Ordinance 2008-1093, which implemented the master plan report’s recommendations.

#### LITIGATION ENSUED

Merck appealed a ruling where a judge found the Township of Branchburg, New Jersey had a rational basis for including Merck’s property in the Raritan River Corridor District (RRC District). The ordinance required a six-acre minimum lot size in the RRC District, which included Merck’s property.

Due to zoning density in the district, the Merck property went from having a maximum of one residence per acre to one residence per six acres. Branchburg maintained prior zoning of the one-residence-per-acre requirement for the existing residential developments that abutted Merck’s property at the northwest and southwest borders.

In Merck’s view, the rezoning of its property to the RRC District was not consistent with Branchburg’s master plan and the ordinance’s purpose. It also asserted that the judge had failed to review the entire record before issuing the ruling.

#### DECISION: Affirmed.

The record supported the judge’s conclusion that “ ‘plausible, supportable, rational and debatable’ reasons for the creation of the RRC District and the inclusion of the Merck [p]roperty.” As a result, Branchburg was entitled to deference “as it offered supportable propositions well within its authority.”

The bottom line: To succeed, Merck had to show that the ordinance “was clearly arbitrary, capricious, and unreasonable,” which it failed to do. Also, the judge hadn’t ignored facts and arguments presented by both sides.

Once Branchburg “presented plausible, credible evidence of the [o]rdinance’s validity it was entitled to deference against the equally rational testimony presented by Merck supporting the exclusion of the Merck property in the RRC District.”

Further, the judge had determined “the validity of the ordinance as applied to the Merck Property; in his opinion, he analyzed the Merck [p]roperty’s physical characteristics and land use history. In addition, the judge carefully reviewed and analyzed the opinions of the competing experts of the [o]rdinance ‘as applied’ to the Merck [p]roperty.”

#### A CLOSER LOOK

Branchburg adopted a land-use ordinance in 2008 that decreased Merck’s property density. Merck challenged the rezoning by filing a complaint, and in March 2016 the Law

Division invalidated the ordinance. But, in doing so, the lower court carved out a new standard for reviewing the legality of ordinances by placing the burden on the municipality, the court explained.

Branchburg appealed, and the court vacated the Law Division’s order and directed it to apply the proper standard for reviewing municipal ordinances.

In the present case, Merck appealed the Law Division’s 2019 order sustaining the challenged ordinance.

### New York’s ‘Two Bridges’ housing project gets green light from the court despite City Council’s stall on approval

Citation: *Council of City of New York v. Department of City Planning of City of New York*, 2020 WL 5048132 (N.Y. App. Div. 1st Dep’t 2020)

Manhattan Borough president Gale Brewer and the Council of the City of New York (CCNY) challenged a decision by the New York Planning Commission (NYPC) to approve an application a developer filed seeking permission to build four large towers in New York’s Two Bridges neighborhood as part of a large-scale residential development (LSRD).

The motion judge granted Brewer’s and the CCNY’s request, which was appealed to the Supreme Court of New York’s appellate division.

#### DECISION: Reversed; case sent back for further proceedings.

As a matter of law, the buildings described in the applications didn’t conflict with applicable zoning requirements, so the NYPC’s approval of those applications had a rational basis and wasn’t contrary to law.

The NYPC determined that the project didn’t require a special permit. Therefore, it wasn’t subject to the Uniform Land Use Review Procedure (ULURP), and the judge’s order had to be reversed.

#### A CLOSER LOOK

While the ULURP didn’t apply, the proposed development was subject to other forms of review, which included public hearings. For instance, it was subject to the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR).

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*The court explained that the city had the power to act, but it chose not to.*

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The lower court found a special permit and ULURP were needed because the proposed towers represented a “huge” change to a previously submitted site plan. “The court did not cite to any statute, regulation or case law to support its conclusion,” the reviewing court noted. “Rather, it reasoned that, ‘if a special permit is necessary to create an LSRD, a special permit is necessary to transmogrify it.’” Also, the judge had looked “by way of analogy” to a charter governing concessions for private use of public property. It also looked to a New York City rule governing modifications to pending

ULURP applications and found that based on those, the proposed changes were “major,” and therefore required the submission of new applications seeking a special permit.

### PRACTICALLY SPEAKING

The court explained that the city had the power to act, but it chose not to. Specifically, it could have taken these steps:

- “to amend the [zoning regulation] to prohibit buildings of this scale in the area, and/or to amend ULURP to add to the categories of land use actions requiring review, through legislation and/or referendum”;
- “before expiration of the Two Bridges Urban Renewal Plan by its own terms in 2007 to amend the [zoning regulation] to include the Urban Renewal Plan’s greater restrictions, including a preference for low to medium rise buildings”; and
- to change the zoning classification of the Two Bridges neighborhood.

Since the CCNY did not do any of these things, it could not “seek a remedy in the courts.”

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#### Want More Information?

Zoning-related filings on the Two Bridges project can be found at [zap.planning.nyc.gov/projects/P2016M0321](http://zap.planning.nyc.gov/projects/P2016M0321).

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## Injunctive Relief

Louisiana-based parish seeks injunction to compel landowners to tear down structures situated in non-commercially zoned area

Citation: *St. Martin Parish Government V. Bryan Champagne, Et Al. Additional Party Names: Champagne’s Cajun Swamp Tours, LLC, The Wharf on Lake Martin, LLC*, 2019-499 La. App. 3 Cir. 8/19/20, 2020 WL 4811638 (La. Ct. App. 3d Cir. 2020)

The Wharf on Lake Martin LLC; Champagne’s Cajun Swamp Tours, LLC, and Bryan Champagne (collectively, the defendants) owned a premises located within St. Martin Parish, Louisiana’s W-2 zoning designation, which did not permit commercial activity.

The St. Martin Parish Government (SMPG) contended that the defendants were in violation of the local zoning code because they were operating commercial ventures including the sale of food and drinks, marketing of fishing paraphernalia, kayak and canoe rentals, and paid boat tours. SMPG also asserted that the buildings on the defendants’ property violated the set-back mandates of the applicable parish zoning ordinance. It filed a request for an injunction against the defendants.

Specifically, SMPG sought to:

- prohibit commercial and/or retail ventures and activity at 1076 Rookery Road, Breau Bridge, Louisiana, in violation of the W-2 zoning district; and
- have the defendants remove all structures at that loca-

tion that infringed on the set-back restrictions set forth in the parish zoning ordinance.

In response, the defendants claimed all building and activity had been conducted after obtaining the necessary parish permits. They asserted “estoppel” as their defense and also contended the applicable zoning ordinance was vague, ambiguous, and unconstitutional.

After SMPG’s request for injunctive relief was denied, it appealed.

### DECISION: Affirmed.

The defendants had a vested right in permits to build the relevant structures at issue in this case, and the lower court didn’t commit manifest error in dismissing SMPG’s request for an injunction.

Despite being in the W-2 zone, SMPG had “readily admitted to issuing the permits despite th[is] . . . zoning designation,” the court noted. And, SMPG was “under a duty to know the ordinances and know what the regulations [we]re,” the lower court had stated, adding that its lawsuit was an attempt to “com[e] in and try[] to shut [the commercial operation] down because it made a mistake, not Mr. Champagne.”

### A CLOSER LOOK AT HOW THE PERMITS CAME ABOUT

In 2011, SMPG issued a commercial building permit (CBP) to Champagne to construct a wood frame building with a designated Construction Type as “Bait Shop” and Proposed Use as a “Grocery Store.” Also that year, Champagne received planning and zoning and health unit clearance for a liquor/beer permit that had been issued to his business.

In 2013, it issued a CBP to The Wharf on Lake Martin for the construction of a wood frame construction with a designated Construction Type as “Deck” and Proposed Use as “Commercial.” Later that year, it issued a CBP to the Wharf for the construction of a wood frame construction with a designated Construction Type as “Commercial” and Proposed Use as “Roof Over Deck.”

Pursuant to the permits, Champagne constructed a building and wharf on the banks of Lake Martin, from which he operated boats in a tour guide business conducted in Lake Martin since 2011. He also sold food, drinks, bait, and other miscellaneous items from the buildings constructed pursuant to the permit.

### VESTED RIGHT TO THE STRUCTURE

The court cited a ruling by the Court of Louisiana Fifth Circuit (*Cuccia v. Board of Zoning Adjustments of/and the Parish of Jefferson*) where the court found that a landowner had a vested right in a structure for which he had obtained the necessary permits. In that case:

- A homeowner sought a permit to construct a two-story accessory building including a garage and patio;
- following the issuance of a building permit, the homeowner poured a slab and roughed in plumbing;
- the work underwent an inspection and the governing body did not notify the homeowner at that time that the permits had been issued in error;
- the homeowner framed out the building in accordance with the permit he had been issued; and

- it wasn't until after neighbors complained about the building height that the governing body suspended the building permit for exceeding the maximum height allowed under the zoning code.

The Louisiana appeals court ruled that the homeowner had a vested right in the building for which he had obtained a permit.

#### APPLYING THE *CUCCIA* RATIONALE TO THIS CASE

The defendants' buildings were designed to run commercial activities and SMPG had been put on notice of this intent when Champagne applied for his first permit to construct a grocery/bait shop.

Generally, it was accepted that "a municipal building permit or license may not arbitrarily be revoked by municipal authorities, particularly where, on the faith of it, **the owner has incurred substantial expense.**" "Such a permit has been declared to be more than a mere license revocable at the will of the licensor. When in reliance thereon, work upon the building is actually commenced and liabilities are incurred for work and material, the owner acquires a **vest property right** to the protection of which he is entitled," the court added.

The bottom line: This wasn't a case where the defendants had been issued building permits that were later revoked. Documents revealed that a stop-work order in this case wasn't issued *because the building permit was improperly issued*; rather, it was issued because the city council revoked the conditional use ordinance.

Also, SMPG "issued not one, but three building permits . . . over the course of two years," visited the location prior to issuing the second and third permits, and issued permits to sell alcohol.

While the issuance of a building permit in error didn't "vest an irrevocable right to proceed under that permit if there [wa]s subsequent action canceling the permission previously granted," "fairness . . . confirm[ed] that when [one] reliev[ed] in good faith and to his detriment on a building permit issued . . . , and incur[red] expense as a result, he ha[d] a vested right," the court in *Cuccia* explained.

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*While the issuance of a building permit in error didn't "vest an irrevocable right to proceed under that permit if there [wa]s subsequent action canceling the permission previously granted," "fairness . . . confirm[ed] that when a [one] reliev[ed] in good faith and to his detriment on a building permit issued . . . , and incur[red] expense as a result, he ha[d] a vested right."*

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The bottom line: It "was arbitrary for [SMPG] to enforce the ordinance after its multiple interactions with [the defendants], including the on-site visit and its approval of various permits to operate the business," the court found. "Under the

facts of this case, [the defendants had] relied in good faith, to their detriment, on the permits issued by the parish and have incurred expense as a result. Thus, [they] ha[d] acquired a vested right," it added.

Practically speaking: Based on these conclusions, the court didn't find any manifest error with the lower court's judgment dismissing the SMPG's request for an injunction.

*The case cited is Cuccia v. Board of Zoning Adjustments off/and Parish of Jefferson, 966 So. 2d 611 (La. Ct. App. 5th Cir. 2007).*

## Special Events Permit

### Village of Hobart, Wisconsin demands Oneida Nation secure special events permit to hold annual 'Big Apple Fest'

Citation: *Oneida Nation v. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020)

*The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.*

The Oneida Indian Nation (Oneida Nation) in Wisconsin hosted an annual "Big Apple Fest" on land partially located in the Village of Hobart, Wisconsin (the village). Pursuant to a local ordinance, the village demanded Oneida Nation to obtain a special events permit to hold the event.

#### A CLOSER LOOK AT THE ORDINANCE AND THE DISPUTE

The village's ordinance stated that no "person"—defined broadly enough to include Oneida Nation—could conduct a special event within the village without obtaining a special event permit from it. The ordinance also imposed several conditions on special events and gave the village the right to "shut down" an event for violating the ordinance.

Regarding Oneida Nation's 2016 Big Apple Fest, the village informed it that it would either have to apply for and obtain a permit or face a penalty under the ordinance. Oneida Nation did not apply for a permit and went ahead with the event on land held in trust for it by the United States and fee land owned by the Nation and located within the village. All of this land was within the boundaries of the reservation under the applicable 1838 treaty.

Following the event, the village issued a citation and imposed a \$5,000 fine on Oneida Nation. The citation also instructed it to appear in municipal court, but that proceeding was delayed (stayed) because Oneida Nation filed suit challenging the village's legal authority to enforce the special events permit ordinance against the tribe. The village counterclaimed, asking the court to rule on its right to enforce the ordinance.

The lower court entered judgment without a trial to the village. Oneida Nation appealed.

**DECISION: Reversed; case sent back for further proceedings.**

The village lacked the authority to enforce the permit ordinance.

A treaty dating back to 1838 between the Oneida tribe and the United States led to the creation of a 65,000-acre reservation. Later, Congress instituted a nationwide policy to encourage tribal members to attain individual ownership within the reservation in an effort to help them assimilate into the American society.

Some of those plots of land were eventually sold to non-Oneida Nation individuals and practically all of the Nation's land was lost. But, in the 1990s Oneida Nation started to buy the original land back.

The village sought to advance an argument that Oneida Nation's land rights had been diminished. The court disagreed, writing, "[A]s a matter of federal law, the entire Reservation as established by the 1838 Treaty remains Indian country. The [v]illage lacks jurisdiction to apply its ordinance to the Nation's on-reservation activities."

#### CASE NOTE

The village also argued that exceptional circumstances warranting the application of the special event ordinance were present. "The general rule is that state or local regulation of tribes on reservations is preempted by federal law," the court explained. But, "[u]nder 'exceptional circumstances,' . . . 'a State may assert jurisdiction over the on-reservation activities of tribal members.'"

The problem for the village was that "[m]ost of the reasons [it] provide[d] to justify its regulation of [Oneida] Nation were not properly raised," so the court would not consider them. The village only "briefly recite[d]—largely without citation to authority or substantive development—arguments made before the district court. To the extent that these arguments [we]re perfunctory and undeveloped on appeal, they [we]re forfeited," the appeals court found.

#### *Practically Speaking:*

*When both an act and its legislative history fail to provide substantial and compelling evidence of a congressional intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening," the court wrote.*

## Zoning News from Around the Nation

### Idaho

Fate of Boise River condo project remains in limbo

The Boise Planning and Zoning Commission approved developer Jayo Holdings' project for a height of 63 not 83 feet as requested concerning a new condominium development despite opposition by the heirs to the Albertsons grocery chain founder who requested a maximum height of 45 feet.

Then, the Boise City Council voted to raise the permissible height to 70 feet, which would allow Jayo Holdings to build the six-story condos. Since neither party got what they wanted, both appealed.

Now, a judge in Ada County has issued a ruling indicating that the project may proceed, but the height issue concerning the 304-unit, five-building project remains in flux, the news outlet noted.

Source: [idahostatesman.com](http://idahostatesman.com)

### Massachusetts

Footnote in recent appeals court decision indicates term 'grandfathering' shouldn't be used to explain why zoning rules don't apply to existing structures

In the recently decided case of *Comstock v. Zoning Board of Appeals of Gloucester*, which was covered in the last issue of *Zoning Bulletin*, a footnote indicates that the term "grandfathering" has racist origins and shouldn't be used to explain why existing buildings aren't subjected to new zoning rules. This ruling "received more media coverage for certain racial history commentary . . . than for the central zoning principles at stake. Yet, for zoning lawyers, there is far more to the ruling than the footnote," Attorney Richard Novak of Pierce Atwood LLP explained in a recent *Massachusetts Dirt and Development Law* blog post.

Source: [massdirtlaw.com](http://massdirtlaw.com)

### New York

Arkport ZBA considering creek variance that would permit developer to build Dollar General store

If a developer gets its way, a 9,100-square-foot Dollar General will be built in the Village of Arkport, New York, on Route 36. But, the developer's plans have been met with some opposition, the *Evening Tribune* reported recently.

Those in opposition assert that the store will compromise traffic safety, the news outlet reported. Now Arkport's Zoning Board of Appeals is considering to clear a hurdle for the Broadway Group (BG)—but not based on the traffic issue.

BG is seeking a variance to from local code mandating that a building be at least 50 feet from the center of the Lime Kiln Creek, the news outlet reported. BG wants the variance so a retaining wall can be built 35 feet from the middle of the creek.

While the ZBA wrestles with this narrow question, public hearings on concerns about traffic and the fact that the store would be located in a flood plain were expected to take place.

Opponents of BG's project also have concerns over the proposed building's proximity to school athletic fields, which are directly across Route 36, the news outlet reported.

If the project gets the green light, BG would have the authorization to build a B-2 commercial zoned property, which allows for retail, the *Evening Tribune* reported.

In other news out of New York, town officials in Somerset will form a committee to examine how local zoning laws apply to solar and battery storage, the *Lockport Journal* reported recently.

During a special meeting in August 2020, the town board members cast unanimous votes in favor of the committee, which will be comprised of six members, including the town supervisor, a councilwoman, three residents, and a Wendel Engineering representative, the news outlet reported.

The town supervisor told the news outlet the committee will address how current zoning laws could be updated. He added that the committee is not being formed in response to

a recent proposal by Somerset Generation Station to build to build a 70 Megawatt solar farm and that the issue of updating local zoning laws to address solar and battery-related issues has been on the town's radar for some time.

Sources: [eveningtribune.com](http://eveningtribune.com); [lockportjournal.com](http://lockportjournal.com)

#### Pennsylvania

South Middleton Township supervisors agree to amend zoning ordinance, resulting in new zoning district

South Middletown Township supervisors have approved a new center district zone for the Walnut Bottom corridor, which runs between Interstate 81 and Carlisle Family YMCA's Rockledge Drive fields, *The Sentinel* reported recently.

In 2019, the township retained Michael Baker International to design a master plan for the area, the news outlet reported. The amendment aligns with that plan, which was completed in February 2020 and outlines the ways in which the township can manage infrastructure improvements, land use, and marketing, highlighted the main goal on which the township should be focused: achieving sustainable reuse and redevelopment of sites in the target area. This zoning amendment contemplates this goal and is intended to allow for a mixed-use town center.

More on the zoning amendment can be found at [smiddleton.com/DocumentCenter/View/2389/08272020---Zoning-Ordinance-Amendment-PDF?bidId=](http://smiddleton.com/DocumentCenter/View/2389/08272020---Zoning-Ordinance-Amendment-PDF?bidId=).

Source: [cumberlink.com](http://cumberlink.com)

#### Virginia

Does a Confederate flag pose a safety issue? That's a question a Louisa County judge may soon answer

Does a large Confederate battle flag that's visible from a

highway create a safety issue warranting removal? That's a key question a Louisa County, Virginia judge is likely to soon address, reported *The Daily Progress*.

The Virginia Flaggers (the Flaggers), which erected the flagpole, on which the flag flies near Interstate 64, consider it to be a monument. They erected the "Charlottesville I-64 Spirit of Defiance Memorial Battle Flag" after the Charlottesville City Council voted to remove two statues of Confederate generals, the news outlet explained.

The 30-by-50-foot flag, which flies from a flag pole that's 120 feet tall, sits on private property and can be seen by motorists as they travel east on I-64, the news outlet added.

At a recent hearing, Louisa County's zoning officials claimed the 120-foot pole is double the height that's permitted under the applicable county ordinance. They would like to see the Flaggers exercise one of three options: 1) take the flag down; 2) reduce the height of the flag pole, as there are some concerns that if something falls it could injure someone or cause harm to property; or 3) have the property owner obtain a special-use exception from the county's board of supervisors.

Before the court, the Flaggers asserted that the flagpole and flag should be treated as a monument that's exempt from Louisa County's zoning ordinance height requirement.

Source: [dailyprogress.com](http://dailyprogress.com)